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**T-Mobile USA, Inc. and Communication Workers of America, AFL–CIO.** Case 14–CA–170229

September 30, 2019

**DECISION AND ORDER**

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

On April 3, 2017, Administrative Law Judge Sharon Levinson Steckler issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel and the Charging Party each filed an answering brief, and the Respondent filed a reply.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions<sup>1</sup> and briefs and has decided to affirm the judge’s rulings,<sup>2</sup> findings,<sup>3</sup> and conclusions<sup>4</sup> only to the extent consistent with this Decision and Order.

**FACTS**

The Respondent is a national wireless telecommunications carrier that operates 17 call centers across the country. The Respondent employs customer service representatives who handle customers’ calls at each call center. Since 2009, the Union has been engaged in efforts to organize the Respondent’s customer service representatives, but to date it has not filed a representation petition for an election among these employees.

Although not mentioned by the judge, it is undisputed that the Respondent has solicited feedback from its employees for many years through employee surveys, focus groups, an open-door policy, and a program called “Frontline Certified,” through which customer service representatives provided prelaunch feedback on planned customer initiatives. In 2015, the Respondent created T-Voice, a nationwide program through which customer service employees could submit “pain points”—work-related issues, the vast majority of which concerned customers, not employees’ terms and conditions of employment—to the Respondent. The primary question presented in this case is whether, as the judge found, T-Voice is a “labor organization” within the meaning of Section 2(5) of the Act that the Respondent unlawfully dominated in violation of Section 8(a)(2) of the Act. For the reasons discussed below, we find, in agreement with the Respondent, that the General Counsel failed to sustain his burden of proving that T-Voice is a labor organization within the meaning of the Act. We also agree with the Respondent that it did not violate Section 8(a)(1) of the Act by using T-Voice to solicit employees’ grievances and impliedly promising to remedy them during an ongoing union campaign.<sup>5</sup> Accordingly, we reverse the judge’s decision and dismiss the complaint.

The Respondent started T-Voice as a pilot program at six call centers in January 2015.<sup>6</sup> In June, the Respondent established T-Voice at all call centers and selected three to five customer service representatives from each call center to work as T-Voice representatives for about 4 hours a week. The T-Voice Charter stated that its mission and objectives were to “[e]nhance Customers[’] and Frontline experience by identifying, discussing, and

<sup>1</sup> No exceptions were filed to the judge’s dismissal of complaint allegations that the Respondent violated Sec. 8(a)(3) by granting benefits because of ongoing unionization efforts and Sec. 8(a)(1) by interrogating employees about home visits from a union representative.

The General Counsel contends in his answering brief that T-Voice representatives were the Respondent’s agents. However, the judge did not so find, and the General Counsel does not relevantly except. The General Counsel’s contention is therefore an attempt to assert a cross-exception in an answering brief, which he may not do. See *White Electrical Construction Co.*, 345 NLRB 1095, 1096 (2005); *Bohemian Club*, 351 NLRB 1065, 1067 fn. 6 (2007).

<sup>2</sup> We find it unnecessary to pass on the Respondent’s exceptions to the judge’s evidentiary rulings on the ground that certain testimony and documents include inadmissible hearsay because, even if admitted, the evidence would not affect the outcome of this case. See *Long Ridge of Stamford*, 362 NLRB 310, 311 fn. 8 (2015), enfd. sub nom. *Healthbridge Mgmt., LLC v. NLRB*, 672 Fed. Appx. 1 (D.C. Cir. 2016).

<sup>3</sup> The Respondent has excepted to some of the judge’s credibility findings. The Board’s established policy is not to overrule an administrative law judge’s credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d

Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>4</sup> We have amended the judge’s conclusions of law and modified the judge’s recommended Order consistent with our findings herein.

<sup>5</sup> The judge also found that the Respondent violated Sec. 8(a)(1) by maintaining a rule that prevents employees from sharing or communicating information regarding T-Voice, applying the “reasonably construe” prong of the Board’s decision in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). The Respondent excepted to that finding. After the judge issued her decision, the Board decided *Boeing Co.*, 365 NLRB No. 154 (2017), which overruled *Lutheran Heritage Village-Livonia* in relevant part. On October 31, 2018, the Board issued a Notice to Show Cause why the rule-maintenance allegation should not be severed and remanded to the judge for further proceedings consistent with *Boeing Co.* The Union opposed remand and expressed its intent to withdraw the rule-maintenance allegation. The General Counsel subsequently filed a Motion to sever withdrawn allegation and remand to the Regional Director for approval. On December 4, 2018, the Board granted the General Counsel’s motion. On December 18, 2018, the Regional Director approved the Union’s request to withdraw the rule-maintenance allegation.

<sup>6</sup> All dates are in 2015 unless stated otherwise.

communicating solutions for roadblocks for internal and external customers” and to “[p]rovide a vehicle for Frontline feedback and create a closed loop communication with [the] T-Mobile Sr. Leadership Team.” The Respondent was the sole source of financial support for T-Voice.

By email dated June 11, Executive Vice President Brian Brueckman announced a national roll-out of the T-Voice program at all call centers. He stated that “T-Voice is . . . made up of Frontline Representatives from each call center[,] plus Site Senior Managers and support team members. Their job is to raise Frontline and customer pain points to ensure they are resolved and then results are communicated back to the Frontline. . . . You can raise issues by reaching out to your T-Voice representatives.” Brueckman then listed the names of customer service representatives who were selected to serve as T-Voice representatives for each call center. Generally, each call center had three T-Voice representatives, each from a different line of business. The term of T-Voice representatives’ service was initially 6 months, later extended to 9 months.

#### 1. T-Voice representatives’ collection and submission of pain points

The record shows that the primary duties of T-Voice representatives were to collect pain points, submit them to management through a database called SharePoint, and share information about new equipment and marketing programs with customer service representatives. T-Voice representatives met with their fellow customer service representatives through various activities, including “table days” and “knowledge checks.” During table days, T-Voice representatives set up a table at their call centers and talked to customer service representatives about new devices or promotions. At the same time, pain points could be dropped into a small box sitting on the table. For knowledge checks, T-Voice representatives met briefly with teams or small groups of customer service representatives and checked their awareness of new developments, such as the release of a new phone or a new T-Mobile app. At the end of a knowledge check, T-Voice representatives typically asked if anyone had a pain point. T-Voice representatives also received pain points through suggestion boxes placed in each call center and through a dedicated

email account. In some instances, T-Voice representatives also raised pain points themselves.

After collecting pain points, T-Voice representatives entered them into a SharePoint database.<sup>7</sup> Every pain point was supposed to be entered into SharePoint unless it was duplicative of a pain point already submitted, and it was to be entered almost verbatim (grammatical errors were corrected). When two pain points identified the same problem but proposed different solutions, both pain points were entered into the database. T-Voice representative Christian Boydo testified that T-Voice representatives did not discuss pain points with other T-Voice representatives before entering them into SharePoint. Senior T-Voice Program Manager Kimberly Tolman likewise testified that T-Voice representatives entered pain points into SharePoint without any evaluation of their content, let alone any group decision whether to submit a pain point. Wichita Call Center Senior Manager Jason Richards also testified that T-Voice representatives did not decide as a group whether to enter a pain point into SharePoint.

Once a pain point was entered into SharePoint, a T-Voice program manager assigned it to one of the Respondent’s customer experience managers.<sup>8</sup> The customer experience manager then independently evaluated each pain point without T-Voice representatives’ input and entered a response into SharePoint. T-Voice representatives then relayed the customer experience manager’s response to the customer service representative who submitted the pain point or, for anonymous submissions, to everyone at a call center.

T-Voice representatives received thousands of pain points and entered them into the SharePoint database.<sup>9</sup> Most of them dealt with customer issues (“customer pain points”) ranging from billing, fraud procedures, and access to computer programs to complaints about the type of music that customers were subjected to while on hold. A small number of them related to employees’ terms and conditions of employment (“employee pain points”). These included availability of paid time off, a loyalty program that rewarded employees with gifts for their longevity with the company, maternity leave for grandparents, pet bereavement, daycare, birthday leave, and “metrics.”<sup>10</sup>

<sup>7</sup> The judge sometimes characterized a pain point submission without a submitter’s name as a pain point from the call center that employed the T-Voice representative who submitted the pain point or from “the group.” Thus, the judge seemed to suggest that each pain point had to be ascribed to someone. The record shows, however, that customer service representatives did not have to sign a pain point before placing it in the suggestion box. Consequently, many pain points were recorded on SharePoint without a submitter’s name.

<sup>8</sup> The judge noted one occasion where a T-Voice representative emailed vice president of customer service and sales, Kathy Woods, raising two customer pain points and suggesting ways to resolve them.

Woods forwarded the email to Tolman, and Tolman testified that she assigned the customer pain points to one of the Respondent’s customer experience managers, the same as if the pain points had been submitted through SharePoint.

<sup>9</sup> The Respondent estimates that as of the end of October 2016, 3256 pain points had been submitted to T-Voice.

<sup>10</sup> Metrics are measurements of a customer service representative’s activities, such as the number of calls he or she handles, the length of calls, the speed with which a customer’s concern is addressed, and whether the customer calls back with the same issue within a certain period of time. Examples of metrics include Internal One Call Resolution

As with customer pain points, the Respondent generally followed up employee pain points by thanking the submitter for raising them and often promising further review with other managers.

The Respondent credited T-Voice for giving rise to the “Loyalty Recognition program.” Customer service representatives made suggestions to T-Voice about a loyalty program, and the suggestions were recorded on SharePoint. On October 22, Vice President Woods announced a new Loyalty Recognition program. Woods stated that “because of [Customer Care Team’s] feedback and the efforts of the T-Voice team,” the program would start in January 2016. The record does not indicate that T-Voice representatives were involved in this matter other than by entering employees’ suggestions into SharePoint. Senior T-Voice Program Manager Tolman testified without contradiction that she handled employees’ suggestions about a loyalty program without discussing them with T-Voice representatives.

Several local call centers gave T-Voice similar credit for changes in working conditions. On November 12, customer service representatives at a call center in Albuquerque, New Mexico, received an email that announced: “You asked and T-Voice listened! A big pain point that was brought to our attention was Wi-Fi connectivity within our building. . . . [S]tarting today we have Wi-Fi available in all the center!!!” On December 21, customer service representatives at a call center in Springfield, Missouri, received an email stating that T-Voice had received suggestions for device-charging stations and therefore, three charging stations had been installed. The record is silent regarding what, if anything, T-Voice representatives did to advance these pain points.<sup>11</sup> Similarly, the record is silent on what, if anything, T-Voice representatives did to resolve an employee pain point concerning available paid time-off, although a June 12 email from Woods credited T-Voice with resolving it.

In February 2016, the Union filed an unfair labor practice charge alleging that T-Voice is a labor organization

and that the Respondent violated Section 8(a)(2) of the Act by dominating, supporting, or interfering with its formation and/or activities. Subsequently, the Respondent began telling employees to direct employee pain points to local management. Additionally, the Respondent removed employee pain points from SharePoint and directed them to local management.

## 2. T-Voice representatives’ meetings with management

T-Voice representatives met weekly with senior managers at their respective call centers to plan T-Voice activities such as table days and knowledge checks for the upcoming week and discuss past successes and disappointments. During these meetings, the number of pain points recently submitted and any major or repetitive pain points were sometimes mentioned, but there is no evidence that T-Voice representatives discussed any employee pain point or idea to resolve a pain point at these weekly meetings. T-Voice representatives also attended managers’ meetings at their respective local call centers and presented information similar to that shared at their weekly meetings. Albuquerque Call Center Senior Manager Melissa Kozlowski testified without contradiction that managers neither discussed pain points with T-Voice representatives nor asked them questions. Some T-Voice representatives also participated in local focus groups.<sup>12</sup>

T-Voice representatives also participated in monthly regional and national conference calls with senior managers and T-Voice support staff, which included Senior T-Voice Program Manager Tolman and other T-Voice program managers. Each call center took a turn leading the meeting for its region. A call center in charge of the meeting shared best practices for gathering pain points and plans for T-Voice activities.<sup>13</sup> Although not mentioned in the judge’s decision, Senior T-Voice Program Manager Tolman testified without contradiction that T-Voice representatives received presentations concerning business projects in prelaunch during one such call, and T-Voice Representative Boydo likewise testified about an instance in

(iOCR), Customer Resolution Time (CRT), and Voice of the Customer (MyVOC). Generally speaking, a customer service representative’s performance is measured monthly based on a combination of metrics, and she may meet or exceed her overall monthly goal even if one of her metrics is below target. Each department within the Respondent sets its own metric goals, which are continuously adjusted to account for business changes. Customer service representatives’ metrics-based performance has some effect on bonuses, awards, discipline, placement, and work schedules.

<sup>11</sup> The record reveals one instance where a T-Voice representative did more than enter a pain point into SharePoint. On September 8, T-Voice Representative Dominique Jones emailed Senior Vice President Callie Field to ask “for a little assistance in resolving a pain point T-Voice has received from the Dedicated Care Department.” Jones explained the department’s need for dual monitors and requested 45 monitors. The

official T-Voice newsletter dated December 9 credited a T-Voice team with raising the need for dual monitors to the Dedicated Care and Special Account Care teams.

<sup>12</sup> Senior T-Voice Program Manager Tolman testified that during one Springfield, Missouri call center focus group, T-Voice representatives got off track and brought up a number of employee frustrations, prompting her to close the focus group and to advise the Springfield managers to focus on customer issues.

<sup>13</sup> Although the record reveals that Meridian, Idaho Call Center Senior Manager Chad Appleton planned to have T-Voice representatives discuss, at a regional meeting, a transition of the CRT metric to a Total CRT metric and a possible name for the changed metric, the record is silent on whether T-Voice representatives met over this issue and, if so, what they did at that meeting and what came out of the meeting.

which he received presentations about open positions.<sup>14</sup> Boydo also testified that T-Voice representatives talked about problems identified in some pain points.<sup>15</sup>

For national meetings, Tolman prepared and sent out an agenda. She sometimes asked T-Voice representatives to review specific brainstorming questions and get feedback from their sites. In general, during these meetings participants learned what pain points had been resolved and what changes were being worked on in response to T-Voice submissions, and T-Voice representatives expressed their personal opinions on pain points. Wichita Call Center Senior Manager Richards testified that T-Voice representatives did not make recommendations and that no pain points were resolved during the national meetings.

For example, at the August national meeting, T-Voice representatives were informed of several changes relating to one of the top July pain points—customer surveys known as MyVOC—and asked to share these changes with customer service representatives at their respective call centers.<sup>16</sup> They were additionally informed of the top three pain points for August, all of which were customer pain points, and were asked to “discuss” them and “[s]eek solutions and creative ideas to overcome” them.

The September national meeting was conducted similarly. September’s top three pain points, all of which were customer pain points, were discussed for 10 minutes. The next 15 minutes were spent informing T-Voice representatives of the status of August’s top pain points, and representatives were asked to share updates with their teams. As the updates were given, several T-Voice representatives and a T-Voice support team member asked clarifying questions and individually made suggestions. The last 30 minutes were allotted to a focus group on the topic of customer impacts and unintended consequences, during which several ideas were voiced.<sup>17</sup>

Tolman initially scheduled a focus group on metrics for the February 2016 meeting, but she removed it from the agenda after the Union filed an unfair labor practice charge alleging, among other things, that T-Voice was a labor organization. At the March 2016 meeting, Tolman reviewed the T-Voice mission statement with T-Voice representatives and asked them to focus on customer pain points. In the summer of 2016, Tolman implemented a new process to update everyone on monthly top pain points. In her August 2, 2016 email to the customer experience method & procedure team, Tolman said that she would identify the top pain points each month based on the number of items submitted that month and then have T-Voice representatives vote on which ones were the most critical. She requested that support teams join a monthly national meeting and provide updates on the top pain points. T-Voice representatives were subsequently asked to vote on the top three pain points negatively affecting customers’ experience.

Finally, T-Voice representatives attended two T-Voice national summits, in Charleston, South Carolina, in October 2015, and in Tampa, Florida, in May 2016. CEO John Legere, several vice presidents, and managers also attended the summits.<sup>18</sup> Each summit lasted two and half days. The Charleston summit opened with Vice President Woods’ welcoming remarks, which introduced the summit as an opportunity to gain knowledge of the Respondent’s business strategies and to share feedback based on the frontline teams’ customer experiences. Several managers then made presentations on business issues, and Tolman led a “T-Voice Strategy” session with T-Voice representatives on “what worked well” and “what they thought of the [T-Voice] program.” In addition, several vice presidents hosted 45-minute focus groups with 10 to 15 T-Voice representatives.<sup>19</sup> In particular, Vice President of Financial Care Sid Bothra conducted a focus group with

<sup>14</sup> In recounting Boydo’s testimony, the judge incorrectly stated Boydo testified that one of the T-Voice teams was working on career “pathing.” Boydo testified that after receiving information about open positions, he and two other T-Voice representatives got together, went on T-Mobile.com, ascertained open positions and the requirements for those jobs, and posted that information on a wall.

<sup>15</sup> The judge found that a December regional T-Voice meeting considered a request regarding the purchase of T-Mobile merchandise and decided that merchandise should be selected and paid for by “reps” and ordered every month. We find it unnecessary to pass on the Respondent’s exception to the judge’s finding that this pain point arose and was resolved during the meeting. The judge made no finding, and the record does not indicate, that T-Voice representatives made a proposal to management concerning a T-Mobile merchandise store to which management responded.

<sup>16</sup> As noted in the judge’s decision, Vice President Woods shared the updates on MyVOC with senior managers, and T-Voice Representative Jason Kapperman did the same with customer service representatives at the Springfield call center.

<sup>17</sup> Other meetings followed the same pattern. For instance, at a January 2016 meeting, T-Voice representatives received an update on the Respondent’s new device-insurance plans and provided feedback on training customer service representatives on these new plans. During a focus group meeting, T-Voice representatives suggested “training in sites for coverage device set-up” and “network-specific talking points to help address customer questions/concerns.”

<sup>18</sup> Tolman and other managers agreed that Senior Analyst for Metrics Adam Irvin should attend the Charleston summit “to capture any metrics-related conversations and bring [them] back.” After the summit, Irvin informed the Business Support team that T-Voice representatives had received a presentation on MyVOC and a local process through which customer service representatives could dispute their MyVOC scores. Irvin added that T-Voice representatives might start asking about the dispute process, as some of them were unaware of its existence.

<sup>19</sup> Prior to the Charleston summit, Tolman sent an email to all T-Voice representatives, informing them of the topics for focus groups. She said that T-Voice representatives could provide feedback on any of the topics.

T-Voice representatives about metrics. The meeting minutes of that focus group show that T-Voice representatives suggested changes in various metrics. The minutes were forwarded to some managers, but Tolman testified that there was no follow-up action on any of the suggestions made at that focus group.

The Respondent posted an article about the Charleston summit on the company intranet, which stated in relevant part: “65 T-Voice Reps rolled into Charleston, S.C., last week to obliterate customer and employee pain points . . . . The T-Voice Summit offered the opportunity to discuss, strategize and resolve top pain points and learn how issues get resolved ‘behind the scenes.’” The article, however, made no mention of any deliberation among T-Voice representatives as a group regarding any employee pain points during the summit.

On April 26, 2016, prior to the Tampa summit, Springfield Call Center Senior Manager Drew Williams emailed the Tech-Care T-Voice team, asking for a volunteer to make a presentation at the summit on one customer pain point that seemed to have the biggest impact in Tech Care. He asked them to “[g]et together” with their on-site peers and send him the top three pain points in Tech Care and any ideas for resolving them. In a follow-up email, Williams identified “[p]roblems filing Handset Exchanges” and “[m]y T-Mobile.com login” as items with the greatest need for resolution. At the Tampa summit, the Respondent shared news about a new team and a new internal search engine. No focus groups were held, but several T-Voice representatives, including one from the Tech-Care T-Voice team, presented five high-impact customer pain points and their ideas of how to resolve them. A few days later, Senior Vice President Field sent an email to customer service representatives, informing them of an upcoming change in response to the pain point presentations about “T-Mobile.com logins.” The email explained that the Respondent would soon create a process through which customer service representatives would be able to help customers who could not directly access their account online without having to file a help desk ticket.

#### DISCUSSION

##### 1. The 8(a)(2) allegation

###### A. Applicable Legal Principles

In determining whether an employer violates Section 8(a)(2) and (1) of the Act by interfering with, dominating, or supporting an employee group, the Board conducts a

two-pronged inquiry. The first inquiry is whether the group is a “labor organization” as defined in Section 2(5) of the Act. If not, the allegation is dismissed. If so, the Board proceeds to the second inquiry, which is whether the employer’s conduct vis-à-vis this labor organization constitutes domination or interference with the organization’s formation or administration or unlawful support of the organization. See *Electromation, Inc.*, 309 NLRB 990, 996 (1992), *enfd.* 35 F.3d 1148 (7th Cir. 1994). Here, the judge answered both questions in the affirmative. The Respondent excepts only to the judge’s finding that T-Voice is a labor organization. That is the dispositive issue before us.

Section 2(5) of the Act defines “labor organization” as “any organization of any kind . . . in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.” In *Electromation*, the Board held that an employee group is a labor organization under Section 2(5) if (i) employees participate, (ii) the organization exists, at least in part, for the purpose of “dealing with” the employer, and (iii) these dealings concern conditions of work or other statutory subjects, such as grievances, labor disputes, wages, rates of pay, or hours of employment. *Id.* at 994.<sup>20</sup>

The phrase “dealing with” in Section 2(5) is broader than the term “collective bargaining.” *NLRB v. Cabot Carbon Co.*, 360 U.S. 203, 211 (1959). It contemplates a “bilateral process involving employees and management in order to reach bilateral solutions on the basis of employee-initiated proposals.” *Electromation*, 309 NLRB at 997. That “bilateral process” ordinarily entails a pattern or practice of a group of employees making proposals to management over time, and management responding to the proposals by acceptance or rejection by word or deed. *E. I. du Pont*, 311 NLRB at 894. If the evidence establishes such a pattern or practice, or that the employee group exists for a purpose of following such a pattern or practice, the element of “dealing” is present. *Id.* If, however, the evidence shows only isolated instances of the group making ad hoc proposals to management followed by a management response of acceptance or rejection by word or deed, the element of “dealing” is missing. *Id.*

The text and legislative history of the Act indicate that together, Section 8(a)(2) and Section 2(5) were enacted to “ensure that employer-dominated groups do not rob employees of their right to select a representative of their own

<sup>20</sup> We do not agree with any implication in the judge’s decision that proof that an employee group acts in a representative capacity is essential to establish that it is a labor organization. The Board has not found it necessary to resolve that issue in prior cases, and we find it unnecessary

to do so here as well. See, e.g., *Polaroid Corp.*, 329 NLRB 424, 434 fn. 29 (1999); *Webcor Packaging*, 319 NLRB 1203, 1204 fn. 6 (1995), *enfd.* 118 F.3d 1115 (6th Cir. 1997), *cert. denied* 118 S. Ct. 1035 (1998); *E. I. du Pont & Co.*, 311 NLRB 893, 894 fn. 7 (1993).

choosing.” *Polaroid Corp.*, 329 NLRB at 424. There is, however, some room under the Act for lawful cooperation. *E.I. du Pont*, 311 NLRB at 893. Consistent with these principles, the Board has made clear that the proscriptions of Section 8(a)(2) are not infringed by a “suggestion box” procedure where employees make specific proposals to management because such a unilateral mechanism does not constitute “dealing with,” *Electromation*, 309 NLRB at 995 fn. 21, and because the proposals are made individually and not as a group, *E. I. du Pont*, 311 NLRB at 894. The Board likewise explained in *E. I. du Pont* that if an employee committee “exists for the purpose of sharing information with the employer, the committee would not ordinarily be a labor organization. That is, if the committee makes no proposals to the employer, and the employer simply gathers the information and does what it wishes with such information, the element of dealing is missing, and the committee would not be a labor organization.” *Id.* Similarly, a “brainstorming” group is not ordinarily engaged in dealing. The purpose of such a group is simply to develop ideas. Management may glean some ideas from this process and indeed may adopt some of them; but if the group makes no proposals, the “brainstorming” session is not “dealing” and the brainstorming group is therefore not a labor organization. *Id.*

#### B. The Judge’s Decision

The judge found that T-Voice is a labor organization within the meaning of Section 2(5). Specifically, the judge found that employees participated in T-Voice on a representative basis. The judge also found that T-Voice existed, at least in part, for the purpose of dealing with the Respondent concerning issues impacting employees, citing customer service representatives’ submission of pain points—which she found included “proposals for changes in their scheduling, benefits, and metrics”—and management responses. The judge rejected the Respondent’s argument that T-Voice representatives’ process of gathering and submitting pain points was a suggestion-box procedure, similar to the process engaged in by the Employee Suggestion Screening Committee, which was found not to be a statutory labor organization in *EFCO Corp.*, 327 NLRB 372 (1998), *enfd.* 215 F.3d 1318 (4th Cir. 2000). In rejecting this comparison, the judge relied on the fact that, unlike a true “suggestion box” process, pain points

were not submitted and collected exclusively via a physical suggestion box. Rather, the submission and collection of pain points sometimes involved face-to-face contacts between employees and T-Voice representatives. The judge also found that several pain points “identif[ied] concerns either from a number of representatives or a number of call centers.” The judge also rejected the Respondent’s argument that focus groups in which T-Voice representatives participated were brainstorming or information-sharing groups that fell within the safe haven articulated in *E. I. du Pont*, above, and she found that their participation “implies a bilateral mechanism, beyond brainstorming, to address pain points.”

#### C. Analysis

We find that the General Counsel failed to sustain his burden of proving that T-Voice constitutes a labor organization within the meaning of Section 2(5) of the Act because he has failed to demonstrate the requisite “dealing” between T-Voice representatives and management. To the contrary, T-Voice functioned primarily as a suggestion box, receiving suggestions from individual employees in the form of pain points and forwarding them, essentially verbatim, to the Respondent’s managers. T-Voice did not screen pain points, develop, as a group, its own proposals for their resolution, or engage in any bilateral dealing with the Respondent over those matters. Moreover, the vast majority of pain points transmitted by T-Voice dealt with customer issues. The judge made no finding that these customer pain points concerned “grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work,” as Section 2(5) requires, and no party has relevantly excepted to her failure to do so. Instead, the judge focused her attention on the relatively few employee pain points that involved changes in employees’ scheduling, benefits, and metrics. Even assuming that all of the pain points did address statutory subjects, however, we find, for the following reasons, that T-Voice was not a labor organization within the meaning of Section 2(5) of the Act.<sup>21</sup>

The fundamental issue presented here is whether *T-Voice representatives* engaged in a bilateral mechanism through which they made proposals to management and management responded to these proposals by acceptance or rejection by word or deed. See *E. I. du Pont*, 311 NLRB

<sup>21</sup> In light of our determination that the Respondent did not deal with T-Voice within the meaning of Sec. 2(5) of the Act, we find it unnecessary to pass on whether the pain points transmitted by T-Voice concerned Sec. 2(5) statutory subjects or whether T-Voice acted in a representative capacity.

We find it unnecessary to address the correctness of *Electromation* and its progeny here. However, in a future appropriate case, we would be willing to consider revisions to this area of law in at least two

respects. First, we would consider whether evidence that an employee committee acted in a representative capacity should be required to show that it is a statutory labor organization. Second, we would consider whether a committee’s discussion of topics of mutual interest that tangentially concern working conditions, like efficiency, production, and safety, is insufficient to show “dealing” regarding the subjects enumerated in Sec. 2(5).

at 894; see also *Electromation*, 309 NLRB at 995 fn. 21 (“[W]e view ‘dealing with’ as a bilateral mechanism involving proposals from the employee committee concerning the subjects listed in Sec. 2(5), coupled with real or apparent consideration of those proposals by management.”); *Stoody Co.*, 320 NLRB 18, 20 (1995) (stating that “*du Pont* makes it clear that recurring instances of an employee participation committee making proposals to management on mandatory subjects constitutes ‘dealing’ and the committee will be found to be a labor organization”). Contrary to the judge, the relevant inquiry is not whether *individual* customer service representatives relayed proposals to management, and management responded to those proposals.

As noted above, the Board has held that an employer’s use of an employee suggestion-box procedure would not constitute an employer-dominated labor organization within the meaning of Section 2(5) and 8(a)(2) of the Act. *E. I. du Pont*, 311 NLRB at 894; see also *Polaroid Corp.*, 329 NLRB at 425 (“Employee free choice cannot be infringed under such a procedure because any individual employee may participate.”). Indeed, the Board has found that an employee suggestion screening committee did not deal with management and was not a labor organization where it merely forwarded the vast majority of suggestions and did not decide which were “best.” *EFCO Corp.*, 327 NLRB at 374, 376 & fn. 15.

That is precisely what happened here. T-Voice representatives relayed their coworkers’ problems and suggestions to management nearly verbatim.<sup>22</sup> T-Voice representatives’ “collection” of pain points from employees consists solely of interaction between T-Voice representatives and employees; thus, it is not evidence of “dealing”

between T-Voice representatives and management. The record shows that although T-Voice representatives solicited pain points from other customer service representatives, they did not make proposals to management as T-Voice representatives with respect to subjects enumerated in Section 2(5), except possibly on a single occasion.<sup>23</sup> Additionally, the mere fact that several pain points raised the same concerns from a number of customer service representatives or call centers does not turn customer service representatives’ individual proposals into group proposals by T-Voice representatives to management.

We recognize that an employee committee could “deal with” an employer by weeding out employees’ proposals it did not wish to advance and recommending others pertaining to Section 2(5) matters, a process that would, in essence, put the committee in the position of making proposals to management based on the suggestions of other employees. See *EFCO Corp.*, 327 NLRB at 376; see also *Aero Detroit, Inc.*, 321 NLRB 1101, 1109, 1114 (1996) (finding that the team “dealt with” the employer where it took employee suggestions through suggestion boxes, discussed the pros and cons of those suggestions to determine if they would reduce costs, held a vote, and forwarded only suggestions approved by a majority of the members to a management team). However, the judge did not find, nor does the record demonstrate, that T-Voice representatives weeded out customer service representatives’ pain points and suggestions. Rather, T-Voice representatives entered pain points into SharePoint substantially as written (aside from correcting grammar) unless they were duplicative.<sup>24</sup> T-Voice Representative Boydo testified that T-Voice representatives did not discuss pain points with other T-Voice representatives before entering them into

<sup>22</sup> In *EFCO Corp.*, 327 NLRB at 374, management members of the employee suggestion screening committee, not employee members of the committee, were responsible for following up with employees on the status of their suggestions. In this case, T-Voice representatives not only entered pain points into SharePoint but also relayed management’s responses to the pain points to employees. Unlike the judge, however, we do not view this difference as dispositive of a legal conclusion about the alleged statutory labor organization status of T-Voice. Cf. *Polaroid Corp.*, 329 NLRB at 429 (finding the “dealing” element based on record evidence that the alleged labor organization was *not* “simply a mechanism by which the [r]espondent communicated information to its employees, or equipped selected employees to answer questions regarding existing policies or programs.”); *NLRB v. Peninsula General Hospital Medical Center*, 36 F.3d 1262, 1274 (4th Cir. 1994) (“We believe that [an employer’s] action [of reporting back to employees what, if anything, it had decided to do with the information it received from them] constitutes the type of communication which is not only not unlawful, but is actually quite logical. . . .”); *NLRB v. Streamway Division of Scott & Fetzer Co.*, 691 F.2d 288, 292 (6th Cir. 1982) (“[N]ot all management efforts to communicate with employees concerning company personnel policy are forbidden on pain of violating the Act.”).

<sup>23</sup> As described above in fn. **Error! Bookmark not defined.**, T-Voice Representative Jones reached out to Senior Vice President Field

concerning a pain point received from the dedicated care department and requested additional monitors. The record, however, does not show whether the pain point itself included a suggestion for additional monitors, which Jones simply relayed to Field, whether Jones himself added his personal recommendation to Field, or whether Jones was making a proposal. In any event, this isolated incident does not establish the requisite pattern or practice of dealing. See *E. I. du Pont*, 311 NLRB at 894 (“[I]f there are only isolated instances in which the group makes ad hoc proposals to management followed by a management response of acceptance or rejection by word or deed, the element of dealing is missing.”).

<sup>24</sup> The Union argues that T-Voice representatives did not enter employees’ pain points exactly as written. Specifically, relying on a few SharePoint entries reflecting pain points from “reps,” the Union asserts that T-Voice representatives must have synthesized several pain points from customer service representatives instead of typing out what was written. The Union also asserts that T-Voice representatives “[a]t times” explained the context of a co-worker’s pain point, citing a single SharePoint entry where T-Voice Representative Michael Davis elaborated on a terse description of a customer pain point and added his suggestion for resolving this pain point. Neither argument is persuasive. We note that, with the exception of T-Voice Representative Davis’s entry described above, there is no evidence that T-Voice representatives substantially

SharePoint, and Senior T-Voice Program Manager Tolman and Wichita Call Center Senior Manager Richards corroborated his testimony. That testimony is consistent with the documentary evidence of thousands of pain points listed on SharePoint, the sheer volume of which further supports a finding that no group decision-making process preceded their entry there.<sup>25</sup>

We acknowledge that in communications with its employees, the Respondent credited T-Voice with certain changes in employees' working conditions. While we agree with the General Counsel that this evidence is probative, the record as a whole nevertheless demonstrates that T-Voice did not, in fact, make any group proposals to the Respondent regarding such matters. As noted above, while Vice President Woods attributed the Respondent's adoption of the Loyalty Recognition program partly to "the efforts of the T-Voice team," she did not detail what those "efforts" were. Indeed, the only evidence as to how the loyalty recognition program came about is Tolman's testimony that, after T-Voice representatives submitted employee suggestions about a loyalty program, Tolman handled them without any discussion with T-Voice representatives. In other words, there is insufficient evidence to establish that T-Voice representatives advanced the Loyalty Recognition program as their own proposal to management. Other instances where T-Voice was credited for changes similarly lack any evidence that T-Voice representatives made relevant group proposals to management.

T-Voice representatives' attendance at various T-Voice meetings and participation in focus groups also does not establish that T-Voice dealt with the Respondent. The Board does not categorically condemn employers' use of

employee focus groups to obtain insights and ideas. See *E.I. du Pont*, 311 NLRB at 897 ("Nothing in the Act prevents an employer from encouraging its employees to express their ideas and to become more aware of . . . problems in their work."); id. at 894 ("[I]f the group makes no proposals, . . . [it] is therefore not a labor organization.").<sup>26</sup> The judge made no finding, and the record does not establish, that T-Voice representatives made group proposals to management during focus groups. As noted above, the record indicates that focus groups held at national meetings discussed topics related to customer or business issues and that T-Voice representatives made suggestions on these topics, including providing customer service representatives with "device emulators" to help troubleshoot customers' devices, a "script" for explaining to customers how phone exchanges work, and so forth. However, Tolman testified that T-Voice representatives did not give collective feedback at national meetings,<sup>27</sup> and the record generally describes only the topics of the focus groups and the suggestions that were made, not *how* the suggestions were made. Cf. *Polaroid Corp.*, 329 NLRB at 432 fn. 22 (noting that the employer in *E. I. du Pont* lawfully "sought only suggestions and ideas from employee participants and did not engage in subsequent extensive refinement, proposals, and responses").

The same is true for the focus groups held at the Charleston summit. The record contains only the meeting minutes of the metrics focus group, summarizing feedback and suggestions raised during the 45-minute meeting between Vice President Bothra and 10 to 15 T-Voice representatives. The minutes summarize ideas expressed during the meeting. While, as the Union points out, some of T-Voice representatives' feedback was phrased in the

modified other employees' pain points. In any event, we do not find that T-Voice representatives' occasional minor edits or revisions of pain points when entering them into SharePoint suggest that they filtered other employees' suggestions. In *EFCO Corp.*, 327 NLRB at 376, the Board found the employee suggestion screening committee was not a statutory labor organization where it forwarded the "vast majority of suggestions" made by individual employees—not all of their suggestions—to management without providing any committee recommendations. We find likewise here as to T-Voice.

<sup>25</sup> Contrary to the arguments of the General Counsel, Customer Service Representative Jason Vann's testimony about what Springfield T-Voice Representative Jonathan Burski told him about how "the process worked" furnishes no basis to infer the existence of a "process for weeding out pain points." According to Vann, Burski said that T-Voice representatives "would meet together periodically once or twice a month, they would gather all the suggestions[.]" "put them on this marker board," "go through them[.]" "select the ones that they want to discuss and ones they want to go over and ones that they think can make a difference[.]" and "contact different department heads to see what could be done about those issues." The judge's recitation of facts concerning T-Voice local, regional, and national meetings reveal that the judge either gave no weight to this testimony, to which the Respondent objected on hearsay grounds, or implicitly discredited it. As described above, the

meetings focused on planning T-Voice activities and discussing their effectiveness, and T-Voice representatives' discussion of pain points was generally limited to reporting recurring issues and receiving updates on previously submitted pain points.

We also find no merit in the General Counsel's claim that the Respondent's "new process," in the summer of 2016, of updating T-Voice representatives on the status of submitted pain points demonstrates "dealing" between T-Voice representatives and management. Under that process, T-Voice representatives would be asked to vote on the top pain points of the month, not to make suggestions or proposals about them to management. Further, by that time, the Respondent was handling only customer pain points through T-Voice.

<sup>26</sup> Compare *Polaroid Corp.*, 329 NLRB at 427, 429 (rejecting employer's argument that it had merely surveyed individual views of the members of an employee group based on evidence that the group members made *group* proposals to management, where group members "thr[e]w out" ideas, the members and a management representative discussed them, and the management representative polled or questioned the members to determine the group's majority view).

<sup>27</sup> The judge found that "[f]eedback [was] provided on the pain points and [T-Voice representatives gave] *personal* opinions, similar to a focus group" (emphasis added).



plural, no suggestion was reported to be coming from “reps.” Again, the evidence does not reveal whether T-Voice representatives made any group proposal to management or merely expressed individual opinions.<sup>28</sup> On this record, the General Counsel failed to prove that the focus groups were anything more than brainstorming or information sharing sessions that do not render T-Voice a labor organization within the meaning of the Act.

In sum, we find the evidence insufficient to establish that T-Voice representatives evaluated individual employees’ suggestions as a group and made group proposals to management. See *Polaroid Corp.*, 329 NLRB at 425 (“[T]he inquiry of whether an employee involvement group constitutes a statutory labor organization focuses on the evidence showing what the organization actually does.”). Accordingly, the General Counsel failed to establish that T-Voice representatives “dealt with” management within the meaning of Section 2(5) or that T-Voice was established for the purpose of enabling T-Voice representatives to “deal with” management. For this reason, we find that T-Voice is not a statutory labor organization. Consequently, the Respondent has not violated Section 8(a)(2) of the Act.

## 2. The 8(a)(1) allegation

The judge also found that the Respondent’s promises to look into employee complaints and respond through T-Voice constituted an unlawful solicitation of grievances and implied promise to remedy them during an ongoing union-organizing campaign in violation of Section 8(a)(1) of the Act. The Respondent contends that the judge erred in failing to consider the extended duration of the union campaign, which had been under way for more than 6 years at the time of the hearing. The Respondent argues that the length of the ongoing campaign negated any inference that T-Voice was initiated for the purpose of eroding employees’ support for the Union. We find merit in the Respondent’s contention.

Where an employer does not already have a practice of soliciting employee feedback, its solicitation of grievances during a union campaign raises a “compelling inference that [the employer] is implicitly promising to correct those inequities he discovers as a result of his inquiries and likewise urging on his employees that the combined

program of inquiry and correction will make union representation unnecessary.” *Reliance Electric Co.*, 191 NLRB 44, 46 (1971), *enfd.* 457 F.2d 503 (6th Cir. 1972). In *Leland Stanford Jr. University*, 240 NLRB 1138 (1979), however, the Board held that an employer did not violate the Act by administering a survey that solicited grievances from employees concerning certain working conditions during a union campaign lasting several years. The Board explained that because, for a considerable period of time both before and after the distribution of the survey, there was no active campaigning by either the union or the employer and no election was scheduled or imminent, the timing of the employer’s conduct did not suggest that the survey was designed to undermine the union. *Id.* at 1138 *fn.* 1.

At the time the T-Voice program was implemented, the union campaign had been going on for several years, and there was no outstanding petition to represent the Respondent’s customer service representatives. Also, the record contains no evidence of the Union’s organizational efforts among customer service representatives at that time.<sup>29</sup> Thus, as in *Leland Stanford Jr. University*, the record does not warrant an inference that the T-Voice program was undertaken for the purpose of eroding employees’ support for the Union or—given the years-long duration of the Union’s campaign—that it would reasonably have that tendency. Accordingly, we dismiss the 8(a)(1) allegation.

## CONCLUSION

Employer-dominated labor organizations obstruct the national labor policy established by Congress by interfering with employee self-organization and free choice of representatives for the purpose of collective bargaining. Our decision today respects that principle. Based on the record as whole, we have found that T-Voice is not a labor organization but rather a program established by the Respondent to improve its business processes by obtaining feedback from employees. Nothing in the Act prohibits employers from adopting such programs. Accordingly, we shall dismiss the complaint.

<sup>28</sup> In any event, even assuming arguendo that T-Voice representatives made proposals to management at that time, Tolman testified, without contradiction, that no follow-up actions were taken on any of the ideas expressed at the meeting.

<sup>29</sup> The record relevantly shows that seven months after T-Voice was implemented nationwide, one employee raised a question during a meeting at the Wichita call center whether his coworkers were contacted by the Union at their homes. In addition, several unfair labor practices charges were filed against the Respondent, but they involved matters

unrelated to the Union’s campaign to organize customer service representatives. See, e.g., *T-Mobile USA, Inc.*, 365 NLRB No. 23 (2017) (finding that the Respondent refused to bargain with the Union concerning a bargaining unit of field technicians, switch technicians and material handlers in Connecticut), *enfd.* 717 Fed. Appx. 1 (D.C. Cir. 2018); *T-Mobile USA, Inc.*, 363 NLRB No. 171 (2016) (finding that the Respondent violated Sec. 8(a)(1) by maintaining certain work rules), *enfd.* in part 865 F.3d 265 (5th Cir. 2017).

## AMENDED CONCLUSIONS OF LAW

1. The Respondent, T-Mobile USA, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Communication Workers of America, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent did not violate Section 8(a)(1) and Section 8(a)(2) and (1) of the Act as alleged in the complaint.

## ORDER

The complaint is dismissed.

Dated, Washington, D.C. September 30, 2019

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| John F. Ring, | Chairman |
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| Marvin E. Kaplan, | Member |
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| William J. Emanuel | Member |
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(SEAL) NATIONAL LABOR RELATIONS BOARD

*William F. LeMaster, Esq.*, for the General Counsel.

*Mark Theodore, Irina Constantin, and Robert Escalante, Esqs.*,  
for the Respondent.

*Glenda Pittman, Esq. and Meron Kebede (CWA Law Intern)*, for  
the Charging Party.

## DECISION

SHARON LEVINSON STECKLER, Administrative Law Judge. A trial was conducted in this matter on October 6 and 7 and November 3 and 4, 2016, in Wichita, Kansas, after opening telephonically on October 4, 2016. Charging Party Communication Workers of America (Charging Party) filed the original charge against Respondent T-Mobile USA, Inc. (Respondent) on February 23, 2016; Charging Party filed an amended charge on June 21, 2016.

<sup>1</sup> Due to illegibility of the original in the transcript, General Counsel moved, without opposition, to replace GC Exh. 94 at TMSP0001538 with a legible version. That motion is granted.

<sup>2</sup> Although I have included citations to the record to highlight particular testimony or exhibits, my findings and conclusions are not based solely on those specific record citations, but rather upon my review and consideration of the entire record for this case. My findings of fact encompass the credible testimony, evidence presented, and logical inferences. The credibility analysis may rely upon a variety of factors, including, but not limited to, the context of the witness testimony, the weight of the respective evidence, established or admitted facts, inherent

The Complaint, issued on June 29, 2016, alleges the following:

T-Voice, a committee within T-Mobile, is a labor organization within the meaning of Section 2(5) of the Act. T-Voice was named as a party-in-interest.

Since at least August 23, 2015, and continuing, Respondent at its call centers, by soliciting employee complaints and grievances during an ongoing organizing campaign, promised its employees increased benefits and improved terms and conditions of employment if they submitted pain points through T-Voice, in violation of Section 8(a)(1) of the Act.

Since at least August 23, 2015, and continuing, Respondent gave assistance and support to T-Voice by, including, but not limited to: establishing the T-Voice program to address employee complaints about their terms and conditions of employment; selecting T-Voice representatives; permitting the dominated union to utilize Respondent's facilities and equipment; convening meetings of T-Voice representatives at Respondent's expense; and, bargaining with T-Voice representatives concerning employees' terms and conditions of employment, in violation of Section 8(a)(2) and (1) of the Act.

Since at least August 23, 2015, and continuing, Respondent, at its call centers, granted benefits in response to its solicitation of grievances during an ongoing organizing campaign by, including but not limited to, changing Respondent's policy regarding employee paid time off and the implementation of an employee loyalty recognition program in violation of Section 8(a)(3) and (1) of the Act.

Since at least August 23, 2015, Respondent maintained an overly broad rule concerning employees sharing or communicating information regarding T-Voice, and is labeled "T-Mobile Internal Use Only," in violation of Section 8(a)(1) of the Act.

About January 8, 2016, Wichita Call Center General Manager Jeff Elliott interrogated employees about their union membership, activities, and sympathies by asking employees if Union representatives had visited their homes, in violation of Section 8(a)(1).

Counsel for the General Counsel (General Counsel), Respondent and Charging Party filed timely post-hearing briefs in support of their positions, which I have duly considered.<sup>1</sup> On the entire record, I make the following findings, conclusions of law, and recommendations.

FINDINGS OF FACT<sup>2</sup>

## JURISDICTION

At all material times, Respondent has been a corporation, with

probabilities, and reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group*, 339 NLRB 303, 303–305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. 56 Fed. Appx. 516 (D.C. Cir. 2003). Credibility findings regarding any witness are not likely to be an all-or-nothing determination and I may believe that a witness testified credibly regarding one fact but not on another. *Daikichi Sushi*, 335 NLRB at 622.

When a witness may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge. *International*

an office and place of business located in Wichita, Kansas. It is engaged in telecommunications business operations throughout the United States and Puerto Rico. *T-Mobile USA, Inc.*, 363 NLRB No. 171, slip op. at 11 (2016). In conducting its operations during the 12-month period ending December 31, 2016, Respondent derived gross revenues in excess of \$100,000 and purchased and received goods and materials valued in excess of \$5000 directly from points outside the State of Kansas. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Based on the foregoing, I find that this dispute affects commerce and that the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

I also find that Charging Party has been a labor organization within the meaning of Section 2(5) of the Act.

#### STATEMENT OF FACTS

##### I. RESPONDENT'S OPERATIONS

###### A. Overview

Respondent operates 17 call centers throughout the country. The call centers, also called "Care," include locations in Wichita, Kansas, Albuquerque, New Mexico (Menaul), Meridian, Idaho, Mission, Texas, and Springfield, Missouri. The other locations are: Augusta; Bellingham; Birmingham; Charleston; Chattanooga; Colorado Springs; Meridian; Nashville; Oakland; Richmond; Salem; and Tampa. (R. Exh. 14.) For a number of years, Charging Party maintained organizing efforts at Respondent's call centers. *T-Mobile USA, Inc.*, 365 NLRB No. 15 (2017).

Respondent's chief executive officer is John Legere. Its chief financial officer is Mike Sievert. For most of the relevant period, the executive vice president was Brian Brueckman. The current executive vice president is Callie Fields.

The employees handling the customer calls are known as customer service representatives (CSRs). Internally, CSRs sometimes are called the "frontline" employees.<sup>3</sup> CSRs may be located within different departments within a call center, and not every call center has the same departments. The General Care department is usually the first level of support, which customers use to make a payment or make an account change. Closed Loop handles customers who are identified as a high risk of cancellation or dissatisfaction. The Onboarding department contacts new customers within a short period after signing up for service. The Retail Support Line interacts with in-store T-Mobile employees selling products. Menaul has two separate call centers: one that

handles regular calls; and one specialized in executive calls, the highest level of customer service, which is known as Menaul Executive Customer Relations (ECR). The Solutions Center, located in Springfield, Missouri, handles complicated customer issues by accessing systems that a regular CSR cannot.

CSRs within the call centers work in smaller groups called "pods." Each pod has a coach and a senior representative. The coach is a supervisor.

At each location, the Resource Processing department schedules CSRs with the goal of ensuring sufficient staffing. Each call center periodically undergoes a realignment, in which CSRs bid upon the area within the call center for work and for their schedules. They receive their bids based upon their rankings, which in turn are based upon performance measurements called metrics.

###### B. Metrics and CSR Performance

Metrics vary with different types of departments and line of business. Metrics are various measurements of CSR activity, such as the number of calls, the length of calls, how quickly is the customer's concern addressed, and whether the customer calls back with the same issue within a certain period of time. Some CSRs may have sales metrics.

Metrics also change from time to time.<sup>4</sup> They may vary with new product launches and rewards for pre-sales of the new products. Respondent witnesses testified that CSRs have no involvement in determining which metrics apply to their department or the scores that are deemed adequate or exceptional.

###### 1. Examples of metrics

Internal One Call Resolution (iOCR) when a customer calls back within a specific time period about an issue. If a customer does not think he is getting quick enough service, he may hang up and immediately call again, which results in a negative score for the CSR.

Customer Resolution Time (CRT) measures the average amount of time, measured in seconds, a CSR spends speaking with each customer. If the average exceeds the standard for the metric, the CSR is considered to be spending too much time on calls.

Coaches and senior representatives also listen to CSRs' calls or may revisit a recorded call. The goal is to ensure the CSR made required statements or followed the plans for a call. The CSR then receives a score. This metric affects both the

*Automated Machines*, 285 NLRB 1122, 1123 (1987), enfd. 861 F.2d (6th Cir. 1988). This is particularly true where the witness is the Respondent's agent. *Roosevelt Memorial Medical Center*, 348 NLRB 1016, 1022 (2006). When testifying against their employer's interests, testimony from current employees tends to be particularly reliable because it is against their pecuniary interests. *Gold Standard Enterprises*, 234 NLRB 618, 619 (1978); *Georgia Rug Mill*, 131 NLRB 1304 fn. 2 (1961); *Gateway Transportation Co.*, 193 NLRB 47, 48 (1971); *Federal Stainless Sink Division*, 197 NLRB 489, 491 (1972).

<sup>3</sup> Respondent's witnesses gave varying answers to define who was a "frontline" employee. Jason Richards, who served as senior operations manager in Wichita, considered all personnel working in a call center, including managers, as "frontline." (Tr. 718.) Nikki Kozlowski from

Menaul stated it covered the CSRs who worked on the phones. (Tr. 806.) Senior Manager Tolman, who was in charge of T-Voice, defined the term as all employees who meet directly with customers. (Tr. 829.) For the purposes of this case, "frontline" employees are CSRs.

<sup>4</sup> Some metrics may be placed as a core metric versus a power play or "kicker," depending on how Respondent wants to emphasize certain goals or behaviors for employee performance. A CSR received the kicker when he achieved more than a certain percentage of a goal and then received an additional percentage towards the overall score. Conversely, should the kicker be significantly below the desired goal, the CSR would have percentage points removed from his overall score. (Tr. 704.)

individual's performance and the team's performance. (Tr. 74–75.)<sup>5</sup>

Customer surveys are used to determine metrics known as Voice of the Customer (VOC or myVOC).<sup>6</sup> Customers answer surveys provided by Respondent, with the resultant score considered an indicator of customer satisfaction.

CSRs also perform marketing duties through their customer interaction. They are measured for average sales per productive hour, which vary depending on the business line in which the CSRs work.

## 2. Relationship between metrics and employee rewards

Respondent weighs the metrics, which in turn yields a percentage; the percentages are added together to give each CSR a total score. Every 6 months, when the departments go through realignment and CSRs bid on departments and schedules, the metrics may determine whether the CSR receives the bid as employees' rankings on metrics are compared. CSRs who want to work in Executive Customer Relations would have to have a history of metrics that exceed expectations. (Tr. 80.) A CSR who has performed well may be able to handle more difficult customer issues or systems and receive the appropriate permissions to do so.<sup>7</sup> (Tr. 646, 705.) Metrics are used to determine bonuses and awards, such as the Winner's Circle national trip. The Winner's Circle recipients also receive gifts, such as telephones. Failure to meet the expectations set by the metrics would be grounds for disciplinary action, up to and including termination.

### C. Unionization Efforts at T-Mobile

Since 2009, Charging Party has been engaged in ongoing efforts to organize Respondent's CSRs. To date, Charging Party has not presented a petition for these employees. During the course of its organization efforts, Charging Party filed several unfair labor practice charges.

To date, a few cases have been litigated against Respondent. Some involve findings against Respondent of unlawful rules, e.g., *T-Mobile USA*, 363 NLRB No. 171 (2016). Others found discriminatory enforcement of rules, interrogation and threats of discipline. See *T-Mobile USA, Inc.*, available in Westlaw, 2015 WL 5350227 (September 14, 2015), affg. JD(NY)-34-15 (August 3, 2015) and JD-57-16 (June 28, 2016). One Board decision involves a different group of employees who consist of a bargaining unit of field technicians, switch technicians and material handlers in Connecticut. *T-Mobile USA, Inc.*, 365 NLRB No. 23 (2017).

## III. T-VOICE

In June 2015, Respondent initiated a nationwide program called T-Voice. Although the term "pain points" has been used

for years in Respondent's call centers, Respondent set up T-Voice to address the pain points in an organized fashion, rather than a random submission of pain points. Pain points are perceived problems and complaints.

At issue is whether the pain points gathered and submitted through T-Voice were limited to customer pain points, such as issues with accounts and equipment, or included employee pain points, those affecting employees' wages, hours and terms and conditions of employment. General Counsel contends that Respondent used T-Voice and the pain points to address employee concerns that involve wages, hours and terms and conditions of employment. General Counsel also contends that by addressing employee and customer pain points, T-Voice affects the metrics for CSRs. General Counsel contends that, once unfair labor practice charge 14–CA–170229 was filed on February 23, 2016, Respondent changed the focus of T-Voice and fewer of these employee concerns were addressed; Respondent then concentrated more on the customer pain points.

Respondent, however, contends that T-Voice was to address only customer pain points. (Tr. 843.) An example of a pain point that affects the CSR's metrics is a slow computer program that causes the call time to increase, and thereby cause average call time to increase and also might cause an unhappy customer to rate the CSR poorly. (Tr. 319.) Respondent considers that example as one that is strictly a customer pain point. The record also reflects pain points about purely employee issues, such as scheduling, rewards, and career advancement.

In reviewing the facts here, I first discuss the initiation of the T-Voice program, how Respondent selected employees to serve as T-Voice representatives, the duties of the T-Voice representatives, the pain points submitted that deal with employee issues and the apparent effects of the unfair labor practice charge filed in February 2016.

### A. Respondent Initiates T-Voice at Its Call Centers

Respondent started T-Voice first as a pilot program at six call centers in January 2015, and then all call centers in June 2015.<sup>8</sup> The stated purpose of T-Voice is to identify, assess and resolve pain points from CSRs. The stated program also communicates back to the CSRs what happened with their submissions. Respondent provided all financial support to T-Voice, which included paid time for the selected employee representatives, their trips, and T-Mobile gear given away in support of the program.

At the time of T-Voice's inception, Kathy Woods was the vice president for the east region and the sponsor for T-Voice. As sponsor, she drove the strategy for T-Voice and kept her peer group apprised of program decisions and strategy. (Tr. 879, 990.) Dave Thompson, who reported to Woods, was the director

<sup>5</sup> Abbreviations used in this decision are: Tr. for Transcript; GC Exh. for General Counsel Exhibit; R. Exh. for Respondent Exhibit; GC Br. for General Counsel brief; R. Br. for Respondent brief; U Br. for Charging Party CWA brief. Certain Respondent and GC exhibits have additional numbering based upon Respondent's Bates numbers, which are listed as Txxx. I have not cited for every mention in the transcript or exhibits. Specific citations to the transcript and exhibits are included where appropriate to aid review, and are not necessarily exclusive or exhaustive.

<sup>6</sup> Development and computerization of this metric took approximately 18 months.

<sup>7</sup> Magenta Heroes is a recognition program for employees who are consistently excellent performers. (Tr. 829.) They receive additional permissions to handle higher level customer contacts or issues without the guidance or assistance of supervisors. (Tr. 705.)

<sup>8</sup> T-Voice also exists at 25 "service partner" call centers. Respondent does not employ the service partners' employees. Although Respondent maintains that service partner representative T-Voice representatives outnumber its own T-Voice representatives, Respondent does not identify the significance of this issue. General Counsel has not alleged any violations with the service partners.

sponsor who also developed T-Voice strategy. Kim Tolman, a senior manager for frontline programs, reported to Thompson. Tolman focuses on programs that support customer insights, career development opportunities and “building partnerships between Care and the Retail sides of the company. Tolman oversees the Magenta Heroes program and T-Voice. Tolman also was a member of Employee Engagement and Retention Team (EE&RT).<sup>9</sup>

Tolman took responsibility for T-Voice in late May or early June 2015. On June 11, 2015, Executive Vice President Brueckman issued an email to the customer service team. It announced that T-Voice would be in place at 18 call centers and who the “frontline representatives” Respondent selected for each location. Three to four CSRs at each location served as T-Voice representatives. Brueckman stated the goals for T-Voice and the T-Voice representatives:

... raise Frontline and customer pain points to ensure they are resolved and then results are communicated back to the Frontline ... Each member of T-Voice will serve for six months and then we'll select a new group of participants. So, if you're interested, talk with your Site Senior Manager.

What does this mean to you? You can raise issues by reaching out to your T-Voice representatives. Be vocal, let us know what you think.

T-Voice was created to drive real change in our business and improve the customer experience by elevating the issues you experience every day.

(GC Exhs. 2, 84).

The following day, on June 12, Vice President Woods issued an email to all CSRs that T-Voice and the frontline resolved “another employee pain-point.” The pain point dealt with paid time off and calling in on the day needed off. Instead of being issued one type of code for the absence or an unexcused absence, those with available paid time off would be able to use it. Woods concluded, “When we do these things we can create both Exceptional Customer experiences *and* Exceptional Employee experiences.” (GC Exh. 3.)<sup>10</sup>

On June 17, 2016, the Menaul Resource Planning Manager, Krista Thompson, sent an email to a number of job classifications, including CSRs, entitled “T-Voice followup.” The email stated that CSRs could contact the resource planner to evaluate the paid time off available and then contact the coach to request the time off on the same day. However, should the CSR come in to the facility and request time off, the preferred method would be for the coach to speak with the resource planner to request the time off. (GC Exh. 10.)

Once pain points were received, Respondent's methods and procedures team (M&P, now known as “customer experience” team)<sup>11</sup> reviewed them and decided what to do with them. The

M&P team consisted of M&P senior managers and site senior managers. Based upon Respondent's log, it appears assignment was made based upon the type of pain point submitted.

#### *B. Selection of T-Voice Representatives*

Respondent selects customer service representatives (CSRs) from the call centers to serve as T-Voice representatives. Usually within a month of selection, Respondent trains the T-Voice representatives about gathering and submitting pain points. The early T-Voice representatives served for a 6-month period; for later representatives, Respondent extended that time to 9 months. Respondent's management decided which employee applicants would serve as T-Voice representatives.

During December 2015, Jason Richards led Wichita's managerial efforts to select the next group of T-Voice representatives. The selection process Richards described: recruiting and communication of spots; screening of interested CSRs; recommendation of who should be included or excluded and discussions of the same issues with the call center's senior leadership.

When soliciting for T-Voice representatives, the representatives' duties were sometimes explained. In a Wichita flyer, one duty was described as representing the voice of the frontline in leadership meetings. (Tr. 343–344; GC Exh. 80.)

When soliciting CSRs for new representatives in Springfield in December 2015, Drew Williams discussed the purpose of T-Voice:

As a T-Voice member you will be responsible for collecting pain points from your peers in Springfield, representing those issues to local and national leadership teams, and tracking and communicating resolution back to the team. In addition, leadership teams will look to YOU to get feedback on decisions, ideas, and changes from everything to our local facilities to our national process, policies and systems. You'll be given scheduled time to run focus groups, attend meetings, and meet with local leaders.<sup>12</sup>

CSR Vann, after discussing his interest with his coach Amond Easley and the coach checking to ensure he was in good standing, also talked with team manager, Michelle Pastor and subsequently Drew Williams. Williams told Vann the letter Vann would need to submit should show who would bring fresh ideas, why the interest and why the applicant would be a good fit with T-Voice. (Tr. 425.) Vann also spoke with Kapperman, who repeated some of the same ideas as Williams. Another T-Voice representative interviewed Vann in early January, during paid working time, for approximately 20 to 30 minutes. During the interview, the T-Voice representative told Vann that T-Voice was the voice of the employee, how employees can raise, questions, comments and concerns that they want to see changed, and take matters up with leadership and management.

At Manual, on December 9, 2015, Kozlowski also sent an

testimony because the email was sent by the vice president in charge of the project and T-Voice had been accepting pain points since its trial period began in January 2015.

<sup>11</sup> Tolman testified to the name change, but never identified when the change took place.

<sup>12</sup> This statement contrasts with Williams' prior statement, that T-Voice was a direct line to provide Frontline feedback to senior leadership.

<sup>9</sup> Tolman's role on EE&RT only came out during cross-examination and presentation of an email (GC Exh. 90 at T678-T679.) In earlier communications, she was identified as senior manager, T-Voice or senior manager, Magenta Heroes. She also was involved with “One Team” and Customer Experience Improvements. (Tr. 908.)

<sup>10</sup> Tolman denied that this email was authorized because she was not consulted and T-Voice was not taking pain points at this time. She testified she had no idea why T-Voice got credit. (Tr. 893.) I discredit this

email to everyone recruiting new T-Voice representatives. In the email she explained that “T-Voice is responsible for enhancing Customers and Frontline experience by identifying, discussing and communicating solutions to roadblocks for internal and external customers.” (GC Exh. 20.) In December 2015, CSR Hernandez attended a table day near the lunch room at the Menaul Call Center. Two T-Voice representatives, Adrian Majorga and Adama Arya, attended the table, with pamphlets and literature about T-Voice, plus wristbands and T-Mobile trinkets. Hernandez asked how to become a T-Voice representative. Arya gave him a card to sign that also had a spot for his supervisor’s signature. The cards would be submitted to management. Hernandez asked what the perks would be, which Arya identified as time off the phones, communication with other T-Voice representatives and training in another state. As far as his duties, Arya told him that he collected both customer and employee pain points and he was able to see what outcomes “could be addressed to improve those concerns . . .” (Tr. 110.)

On January 14, 2016, Tolman welcomed the newly selected T-Voice representatives and congratulated them “for being an advocate for your Frontline peers!” She also said that the point was to “resolve your internal and external customer pain points.” She identified the support team, which included Woods, Thompson, a human resources sponsor, Senior Analyst Ryan McDonald and two administrative staff members. (GC Exh. 99.)

### *C. Duties of T-Voice Representatives*

The selected T-Voice representatives encourage fellow CSRs to submit pain points, which are presented to management through meetings and in writing. Every employee signs a confidentiality agreement, but T-Voice representatives sign an additional confidentiality agreement that permits the T-Voice representatives early access to non-public, or “dark,” plans for marketing initiatives, such as iPhone and Un-Carrier launches. (Tr. 673.) The T-Voice representatives typically receive four hours per week off phone duties to take care of T-Voice matters and Respondent pays them for their time. The parties stipulated that T-Voice was funded entirely by T-Mobile.

#### *1. Attend summits*

T-Voice representatives also attended T-Voice national summits, first in October 2015 in Charleston, South Carolina and, in May 2016, in Tampa, Florida. CEO John Legere, several vice-presidents, and managers also attended the summits with the T-Voice representatives. The summits lasted 2 ½ days. The sessions at the summits discussed new products and, as Tolman answered to leading question on direct examination, were all customer experience related. The Charleston summit included a presentation on myVOC and the “strategy.” Tolman and another manager led a session to “gain feedback” from T-Voice representatives. Tolman denied that any pain point consensus was reached or any solutions discussed. However, in a series of emails about the planning of the Charleston summit, Tolman instructed the T-Voice team, including vice presidents, to prepare for employee engagement and T-Mobile culture, which included frontline focus programs, and metrics as a topic of discussion for focus groups. (Tr. 928-933; GC Exh. 90 at T4960-T4963; R. Exh. 16.) Respondent summarized the summit afterwards, stating that “65 T-Voice Reps rolled into Charleston, S.C., last week

to obliterate customer and employee pain points . . .” and to resolve them. (GC Exh. 94 at TMPS1538.)

For the Charleston summit, Tolman and other managers discussed whether Adam Irvin, a senior analyst for metrics on the EE&RT, should attend. EE&RT calls involved directors within the sites and “identifying items with the culture of our call centers.” (Tr. 903-904.) Irvin’s manager, Angela Joslin, who handles EE&RT and metrics, agreed that Irvin should attend the summit to represent EE&RT and “capture any metrics-related conversations and bring back to me.” She stated that EE&RT had “closely partnered” with T-Voice to support addressing their concerns and improving implementation of ideas. Tolman commented by email, “I think this is a great opportunity for you guys to see what T-Voice is planning to take and how can we utilize them to drive performance and recognition at each of the site levels in 2016.” (Tr. 903-905; GC Exh. 90 at T678-T679.)

#### *2. Collect pain points and educate CSRs*

The primary duties for T-Voice representatives were to collect and give feedback on pain points and educate their colleagues on new marketing programs and equipment. Respondent released the T-Voice representatives from their phone duties to perform T-Voice duties. In order to be released, the T-Voice representatives worked with their local Resource Planning department to ensure adequate staffing while the T-Voice representatives performed their duties.

Once selected, T-Voice representatives solicited pain points through various means. CSRs learned of a few ways to submit pain points to T-Voice representatives through literature left on their desks or emails. To submit pain points, suggestion boxes, frequently in Respondent’s magenta, were placed in locations in each call center. CSRs did not have to sign the pain points submitted to the T-Voice box and, for the anonymous submissions, would learn about the results through a general email. The T-Voice representatives retrieved the pain points from the boxes. CSRs also could submit the pain points directly to T-Voice representatives. T-Voice also had a dedicated email link to submit pain points to a group of T-Voice representatives.

T-Voice representatives held “table days” in the call centers. The table days were used to collect pain points or address new equipment, such as a new iPhone, or an application, which Respondent identified as an educational need. Jason Richards, Wichita senior manager of operations and support, or Tolman would raise an issue (could be regional or national). Richards frequently directed the T-Voice representatives on what to present at the table days. Sometimes Wichita table days gave out apples to CSRs who submitted a pain point. (Tr. 583-584.)

In at least one location, T-Voice also posted signs, called Flush Facts, on bathroom stall doors. One such Flush Facts in Menaul announced promotions for customers, such as discounts on cellular telephones. Kevin Elder testified that the promotion related to a metric that gave CSRs a 10 percent of the cost of accessories back as Reward Zone (also called Appreciation Zone) points. He did not know how long the Reward Zone in place. In Wichita, a sign promised Reward Zone points to CSRs when their submitted pain points for policies or systems were fixed. (GC Exh. 81.) As the CSR accrued the Reward Zone points, the CSR could redeem them for gift cards, vacations and

other items.

T-Voice representatives also conducted “knowledge checks” in which the representatives went to the working pods and talked to CSRs new equipment and applications during work time. As before, the T-Voice representatives obtained authorization for the paid time through resource planning. (Tr. 556–557, 585.) At the end of a knowledge check meeting with a pod, the T-Voice representative also asked for any pain points. (Tr. 586.)

### 3. Keep track of pain points and recording them in the database

Respondent established a database called SharePoint for T-Voice input of pain points.<sup>13</sup> A T-Voice representative or manager entered the data in the program. If the pain point included a CSR’s name, the CSR received an email that the pain point was received. (Tr. 559, 666, 749.) Every submitted pain point, almost verbatim, was supposed to be entered into the system. The M&P project manager then directs the pain point to the appropriate manager. (Tr. 852.)

Respondent’s headquarters customer service methods and procedures group (M&P) reviewed the submitted pain points. Different management groups had different responsibilities for review and assessment of pain points. A support team reviewed the pain point, assessed it and gave feedback to the group submitting the pain point. Other pain points were directed to customer experience management group, such as general care. (Tr. 664–665.) Respondent maintained that once the pain point was assigned, the T-Voice representatives had no further input and the assigned manager was responsible. (Tr. 855.)

Richards testified that duplicate pain points and non-customer pain points were not to be entered into SharePoint. (Tr. 666–667.) Respondent maintained that the T-Voice representatives or management entered only customer pain points, not employee pain points, into SharePoint. However, Respondent’s documentation and CSR testimony reflects that T-Voice accepted and addressed employee pain points until at least February 2016. In some cases, T-Voice representatives also made suggestions about how to solve pain points. For example, in September 2015, a representative from Oakland suggested changes to errors that would result in more customer satisfaction and yield a decrease in iOCR. He sent his suggestions to Vice President Woods, who forwarded it to Tolman and others. Tolman responded that the Solutions Center was working on improvements and “This much detail is helpful for them to identify priority focuses.” (GC Exh. 91 at T5218–5219.)

Tolman testified that the employee-related pain points were not assigned to the M&P managers, nor discussed with T-Voice representatives. However, a number of these reflect assignment to Tolman, who was also involved in the Employee Engagement and Retention Team (EE&RP). As will be seen below, some were assigned to the Metrics analysis group for T-Voice.

The SharePoint spreadsheet reflected the person who entered it, the name of person submitting the pain point if available, the call center location, a title/category of the pain point, and an overview of the pain point submitted. The next columns reflected the support team response and the support team answer,

which would be question answered, use existing policy, new pain point or existing pain point. The following column showed the date the modified and a date that showed the date entered. (Tr. 863–865.)

### 4. Meet in national and regional meetings and with local management

T-Voice representatives met with managers in charge of the T-Voice program at their respective call centers. The topics included what their activities would be for the upcoming week, pain points, and needs for knowledge checks. Managers Richards and Nikki Kozlowski testified about these meetings. For Richards, located in Wichita, meeting topics included previous T-Voice activities, identify the activities’ successes and disappointments, and plan the upcoming activities. Discussions also included effective communication for obtaining pain points. (Tr. 672.) For Kozlowski, located in Albuquerque, the meeting discussion included the number of pain points submitted and if any major or repetitive pain points are showing up, then plan upcoming activities. (Tr. 755.)

T-Voice representatives attended managers’ meetings and presented information similar to that shared with the manager. (Tr. 564.) Manager Kozlowski testified to leading questions that pain points were not resolved in these meetings. T-Voice representatives were not present for the entire meetings, usually making their presentations at the beginning or end of the meetings.

T-Voice representatives also participated in regional and national conferences calls with each other. Managers from various locations and T-Voice support staff also participated in these calls. (Tr. 565.) Each call center presented its plans and previous activities. (Tr. 566.) The national meetings, run by Kim Tolman, include the support organization and T-Voice representatives from around the nation. Feedback is provided on the pain points and representatives give personal opinions, similar to a focus group, but Respondent witnesses denied that the T-Voice representatives presented any suggestions. Tolman developed the agendas for the national meetings.

Tolman also conducted T-Voice focus groups. She stated the purpose was to share ideas and provide educational response and experiences from the frontline. (Tr. 839.) However, she denied that any kind of focus group was specific to T-Voice. (Tr. 840.) Despite this statement, Tolman also traveled to some of the call centers and conducted focus groups about T-Voice. She said that at three call centers, the topics of discussion deviated from customer pain points. One occurred at Springfield in September 2015. Tolman did not identify when the other focus groups took place. On cross-examination, however, it became apparent that some focus groups were specific to T-Voice and, at other times, T-Voice representatives were in meetings to propose solutions to certain customer pain points.

T-Voice representative Boydo testified that, in one meeting, one of the T-Voice teams was working on “career pathing,” which addressed the number of positions, problems with bidding, and attempts to obtain promotions given the limited number available. In response, Boydo and two other T-Voice

<sup>13</sup> On June 29, 2015, a program manager on the M&P team sent an email to Tolman about how to use the database. The email addressed only inclusion of customer experiences. (R. Exh. 11; Tr. 844–846.)

representatives created a career wall after examining t-mobile.com, determining the open positions and the requirements for each position. (Tr. 566–567.) The regional calls also discussed T-Voice best practices, such as how to run table days or knowledge checks.

National calls, held on a bi-weekly basis, included a national managerial representative with T-Voice representatives; however, the T-Voice representatives attended only monthly. Richards testified that no pain points were resolved in the national meetings, nor did T-Voice representatives submit recommendations.

T-Voice representatives also attended leadership management meetings in Wichita. Richards testified that the representatives would not attend the entire meeting, but only the last 10 to 15 minutes. The representatives presented a standing agenda to update management on T-Voice. According to Respondent’s witnesses, pain points were not resolved during these meetings. (e.g., Tr. 677.)

#### *D. T-Voice Solicits Pain Point Submissions*

A review of the exhibits and testimony demonstrate that the pain points were consistent with the stated goal of dealing with frontline and customer pain points. The customer pain points, by far the majority submitted, dealt with a number of diverse issues, from billing, fraud procedures, and access to computer programs to complaints about the type of music customers were subjected to while on hold. (R. Exh. 12.) These are not disputed.<sup>14</sup> However, a number of pain points dealt with employee concerns.

Tolman prepared an agenda for a T-Voice national meeting for August 19, 2015. The national meeting covered issues in billing and simplification. Tolman sent the agenda to management and the T-Voice representatives. Action items for August included “Continue to trend and discuss top issues within your sites focus groups” and “Seek solutions and creative ideas to overcome pain points.” However, Tolman identified for follow up the top pain point from July: Improvements in myVOC. The improvements are later described in an attached Power Point presentation. (GC Exh. 90 at T5716–T5724.) Tolman contended testified that myVOC was a point for T-Voice representatives to educate CSRs. Nonetheless, the actions on myVOC scores followed some criticisms of T-Voice, as noted in Respondent’s SharePoint program.

On August 21, 2015, Vice President Woods sent to senior managers, directors, and location managers an email with a T-Voice update. Some of the accomplishments were:

T-Voice has worked with NCSQ [National Customer Service Quality team] to help improve the MyVOC SMS Survey experience, provided feedback to make sure customers received their . . . discounts on the latest rate plans, helped update a number of documents to improve the frontline process, and partnered with site leadership to enhance the culture<sup>15</sup> in each

of the call centers.

(GC Exh. 90 at T662–T663.)

CSR Vann spoke with T-Voice representative Kapperman several times about the VOC disputes and iOCR issues and put suggestions in the suggestion box as well. On September 6, 2015, Springfield T-Voice representative Jason Kapperman updated employees about some of the topics discussed. In addition to addressing the computer issues, Kapperman addressed VOC concerns and said that VOC would stay as part of the metrics b/c important to measure what customer thinks; any further concerns should be addressed to coach or business support team members. For unpaid time off for emergency sick days, Kapperman stated the employees’ feedback had been sent for review and in the meantime, review the policy. Regarding reserved realignment spots for bids, the answer was that it would not be fair to require all new hires to work the graveyard or 6 a.m. shifts so that the teams remain balanced. Regarding obtaining more equipment for the facility’s workout room, “We are working with facilities to determine, what, if any, can be added based on employee safety and overall cost and upkeep of the equipment. Stay tuned.” (GC Exh. 37.) In Springfield, T-Voice was credited with obtaining a charging station in the break room for employees to charge their electronics. (Tr. 418; GC Exh. 39.) Shortly after discussions about more equipment in the exercise room, a punching bag and a few other items appeared. (Tr. 418.)

CSR Victoria Singer testified that, in Menaul, around Christmas 2015, she attended a team meeting in her pod, which included the entire team, Coach Aja Wood and Senior Representative Everett Anaya. Wood said T-Voice was “our voice” and that it was there to solve pain points by submitting them in the T-Voice box or contacting the new T-Voice representative, Alex Garcia, directly. Asked what could be submitted, Garcia said anything at all. A coworker raised that the women’s bathroom did not have hot water and Garcia said to submit anything.

CSR Hernandez submitted several pain points to T-Voice. Another pain point was differentiating paid sick time versus vacation time. The third was requesting reinstatement of employee phone discounts. One was about employee schedules upon bids. Regarding scheduling, Hernandez spoke to his supervisor, Brian Trent. Trent told him to submit the issue to T-Voice and reminded him about the T-Voice suggestion boxes. In August 2015, after he heard nothing about his pain point, Hernandez spoke with a T-Voice representative, Adrian Mayorga. Hernandez asked how long it took for T-Voice to respond and how T-Voice handled its process. Mayorga told Hernandez that the pain points were submitted to management and management would review them; the T-Voice representative would provide findings and results after management decided what to do with the pain point. Hernandez never received any emails resolving his submitted pain points.

CSR Kevin Elder (Menaul) was directed by supervisor,

feedback to leadership members for customer experience items.” (Tr. 902.) This explanation seemed more of an exercise in using buzzwords than in explaining what a short phrase meant. Woods was not called to testify about what her email meant.

<sup>14</sup> On August 25, 2015, for example, Wichita Manager Amy Carlson sent on behalf of the T-Voice representatives an email requesting ranking of pain points, none of which were specific to wages, hours, or terms and conditions of employment. (GC Exh. 87.)

<sup>15</sup> Tolman testified that “enhancing the culture” means “engaging and creating awareness that T-Voice is available and an avenue of getting



Roxanne Garza, to contact a T-Voice representative about his concern with a lack of dispute process for VOC scores. Elder stated sometimes he received zeros on an UP score because he did not have authority to make the changes the customer wanted or he was unable to access the account. When Elder spoke to T-Voice representative Garza about his concern, she told him, “They [T-Voice] were discussing it.” (Tr. 157-158). He discussed the matter with another T-Voice representative and received a similar response.

In December 2015, Kim Tolman, senior manager for frontline programs, sent an email with an attached Power Point presentation to discuss the 2016 T-Voice Roadmap. In January 2016, managers received an email received a T-Voice update covering December 2015. The update included a review of pain points from December 2015. The update included the number of forms submitted by category. Most related to dealing with devices, accounts, plans and offers and troubleshooting. However, 12 forms were submitted each regarding “departments” and “call center management”; another 8 involved employee metrics.<sup>16</sup>

Tolman admitted that Respondent did not instruct T-Voice representatives to limit submitted pain points, but testified, “As of today, we ensure that the T-Voice reps have the resources at site level, so if they receive it at the site, it won’t be submitted because at that point they’ve directed that employee to work with site leadership.” However, she also testified that she instructed T-Voice leaders, after the national roll out, to review for duplicates and deal with site leadership teams, but then said she would conduct them with senior leadership teams by telephone. (Tr. 872–873.) Kozlowski, who was involved since the national T-Voice roll out, did not testify to receiving those reminders.

#### *E. Particular Submissions and Actions upon Employee Pain Points*

Respondent’s brief argues that the emphasis was on customer pain points and a few others slipped through the system. Respondent argues that employee pain points were not a large number between inception of the program and the first week of August 2016, when its submitted record keeping ended. The submitted pain points involved problems experienced by customers. Anyone, including managers, could submit a pain point. Respondent contends that, for the pain points submitted through the first week of August 2016, only 2.5 percent of the pain points, or 53 items, fell outside Respondent’s goal to collect customer pain points. This representation is misleading, as most of the employee-related pain points occurred before the unfair labor charge was filed in late February 2016. A number dealt with employee issues, including metrics.

Respondent’s brief does not address how it handled the employee pain points before the charge was filed. I therefore am compelled to provide some of the submissions and actions, which are located primarily in Respondent’s SharePoint spreadsheet (R. Exh. 12), a 900-plus page document in 6-point Calibri

font.<sup>17</sup>

1. Respondent maintains that the focus of the T-Voice program was to collect customer pain points, not employee pain points

At issue is whether Respondent made clear through its managers and T-Voice representatives that T-Voice was collecting customer pain points only. Tolman and Richards testified that T-Voice representatives were supposed to only collect customer pain points. (Tr. 658, 849). Richards testified that pain points unrelated to the customer experience should be directed to the appropriate person, such as a team manager, coach, or site director. (Tr. 667.) Richards also testified that the T-Voice representatives had no discretion in determining whether to submit a pain point. (Tr. 670.) Tolman said that a T-Voice representative only had discretion to not enter into the database non-customer related issues and duplicates. (Tr. 850.) At the same time, T-Voice representatives were to submit a pain point without any evaluation. (Tr. 851.)

According to CSR Boydo, a T-Voice rep at Wichita Call Center, if a paid point was not customer related, subjects like paid time off or bonuses, he would refer the CSR to managers or the human resources department. (Tr. 561–562.) However, Boydo did not begin his service in T-Voice until 2016 and this testimony was contradicted by early communications to the CSRs and emails touting T-Voice accomplishments. Additionally, several CSRs who spoke with T-Voice representatives and managers were told pain points could be either customer related or employee related and should submit them all.

On July 9, 2015, Wichita T-Voice Representative Mike Ringer sent an email to the on-boarding department, including CSRs, coaches and managers, about what was happening with T-Voice. In relevant part, the email told the recipients:

Reach to you all and gather ideas that will help solve our customer’s pain points, as well as our own.

...

I know we talk to a lot of customers that end up somewhat dissatisfied, and it relies on us to make it right, and sometimes, there are certain things we wish we could do, but the system won’t allow us to perform these actions in real time.

My job is to eliminate that.

This is our chance to address these issues, and make it more pleasant on both ends, for the customer, AND the company.

So if you could please, write these issues/conveniences down, forward them to me, and I will address them the first chance I get, and resolved as quickly as possible.

Looking forward to hearing from all of you and continuing on our Un-Carrier move!

(GC Exh. 86.)

<sup>16</sup> Manager Richards testified contradictorily about seeing the pain points. Although he was not involved with T-Voice in December 2015, he first testified that he entered pain points into SharePoint. He later testified that he did not see the pain points and only knew of the pain points from interactions with the T-Voice representatives. (Tr. 728.)

<sup>17</sup> I also include some employee pain points that arose before the 10(b) period, which began August 23, 2015, to demonstrate Respondent’s pattern in handling these issues. Some of the issues in this document will be covered in a subsequent protective order. In my discussion, I have taken care not to reveal specific marketing plans, other corporate secrets, or how metrics are calculated.

In Springfield, CSR and T-Voice Representative Jason Kaperman sent an email announcing T-Voice as a voice of the employee and a way to bring up concerns, or pain points, to management. Coach Dustin Beasley spoke with his team, which included CSR Jason Vann, a few times and employees raised the issues. Vann testified that employees raised the VOC survey and ratings based upon the survey and the iOCR. In addition, the employees in Springfield raised navigation and functionality of the computer systems. (Tr. 391-392).

At Menaul, on July 11, 2015, Manager Kozlowski sent to everyone at Menaul an email announcing the T-Voice representatives with the stated purpose of resolving pain points for “Customers and Yourself.”<sup>18</sup> Similarly, on August 11, 2015, T-Voice representative and Menaul CSR Ani Martinez emailed that her T-Voice job was to raise frontline and customer pain points to ensure they are resolved and then communicate those results. (GC Exh. 17.)

After the Charleston summit, Respondent posted an article, dated November 2, 2015, available to all employees, to summarize the event. The first lines of the article stated:

- A group of Frontline reps known as T-Voice gathered in S.C. to talk employee and customer pain points
- T-Voice is a direct line of Frontline feedback for senior leadership

The next line stated that the purpose of the meeting was to “obliterate customer and employee pain points.” (GC Exh. 94 at TMPS1538.)

Kozlowski, in recruiting new representatives in December 2015, used language reflecting resolving issues for internal and external customers. After the unfair labor practice charge was filed, Kozlowski’s subsequent email for recruiting clearly stated that the program was to resolve customer issues and made no reference to employees or internal customers.

## 2. Employee Loyalty Program

SharePoint reflects that employees submitted recommendations to T-Voice about the loyalty program, also called milestone anniversary gifts. As an example, Respondent gave an August 21 response to a New Mexico TC entry, dated August 2, 2015:

This is great feedback. I am working closely with the Employee Engagement team to implement a recognition program for employee tenure. There will be more to come over the next few weeks.

(R. Exh. 12 at T145 and T605; also see at R. Exh. 12 at T20, Bellingham.)

On October 22, 2015, Vice President Woods sent to all customer service employees an email announcing that, because of feedback and “the efforts of the T-Voice team,” Respondent was

initiating a new employee loyalty program. On the same date, Karen Viola, the site manager at Menaul, announced by email an employee loyalty recognition program that gave awards, such as t-shirts and jackets and up to an excursion to a spa, based upon the number of years served with Respondent. After encouraging CSRs to keep the feedback coming, the email said “#bestteam ever #toicerocks.” (Tr. 101; GC Exh. 4.)<sup>19</sup> When Viola received questions about whether the program was retroactive, she sent her question “up to the national T-Voice team and will get you an update this week.” (GC Exh. 4.)

After Woods’ email, T-Voice continued to receive pain points about its loyalty program. One pain point suggested that employees receive telephone discounts and free telephones after five years’ tenure. As of approximately October 29, 2015, the item was marked as no change and with further comments:

This item has been reviewed with the Employee Engagement team and Care leadership group. We will continue to align with our current process and support the company strategy . . .

(R. Exh. 12 at T192 and T652, Springfield.)

One from Salem recommended the program to include T-Mobile pants or athletic shorts and lunch or dinner with a manager. The response, on November 12, 2015, stated, “These are great suggestions. I am going to work with the HR teams and site directors as options into the new loyalty program.” (R. Exh. 12 at T182 and T642.) Another, submitted January 19, 2016 from Bellingham, asked to change back to a gift that was removed or alternatively use Appreciation Zone points for employees with 10 years’ service. That item was marked as awaiting response and had nothing entered in the notes. (R. Exh. 12 at T290 and T750.)

At Menaul, about December 2015, a slick-looking T-Voice poster promoted T-Voice’s accomplishments for the year 2015. Of 1272 pain points submitted, 1143 were “answered/resolved.” It touted the new employee loyalty program, with the note “Feedback shared and project delivered!” It also said, “Frontline advocates through focus groups, table days, monthly incentive support.” It further identified T-Voice’s 2016 goals, including “building working partnerships with the Customer Care Leadership” and expanding the partnerships so that all teams could access T-Voice. (GC Exh. 11.)

Tolman explained that T-Voice received an idea for a 10-year recognition program. Despite a number of call centers having their own loyalty programs, Tolman decided that a consistent program should be shared with Human Resources. (Tr. 869–870.) However, Tolman demurred and said it was not the first time the loyalty program had been a point of feedback from the front line. She denied that the loyalty program was assigned to a M&P manager. (Tr. 870.) She further denied, to a series of leading questions, that she ever discussed the employee recognition program with T-Voice representatives or a focus group. (Tr. 871.) The suggestion was not the same as the ultimate loyalty

<sup>18</sup> Kozlowski’s testimony on this email conflicted with evidence that showed employees submitted pain points affecting their wages, hours and terms and conditions of employment. Her testimony here did not specifically deny that the employees could submit pain points on their wages, hours and terms and conditions of employment at that time and sounded like a post hoc excuse.

<sup>19</sup> Manager Kozlowski denied knowledge that this email was the result of any T-Voice submission. Respondent did not call Vice President Woods or Viola to testify about what their emails meant and the emails directly contradict Kozlowski’s testimony.

program, which Tolman stated she designed. (Tr. 871.)

This explanation rings hollow as Respondent's documents reflect that it gave T-Voice the credit for the customer loyalty program changes in late 2015. Further, the response to the Salem pain point demonstrates that T-Voice, upon receipt of the pain point, intended to work with human resources and the locations, instead of immediately directing the employees to their sites' management or to human resources directly.

### 3. Scheduling and Time Off

A number of submitted pain points related to how CSRs received paid time off or requests for additional forms of time off. Some also addressed problems in scheduling or dealing with the resource planning department, in charge of scheduling at each facility. Others dealt with how Respondent should schedule holiday time or distribute time off.

From Richmond, a July 28, 2015 submission requested a better work-life balance by increasing paid time off per pay period or adding sick days. (R. Exh. 12 at T161.) The August 21, 2015 summary of Respondent's action was:

This feedback is something we are reviewing with HR and employee engagement team. We are always trying to help create a strong work life balance and provide options for all employees to have the time they need outside of T-Mobile. I will continue to work with them and help find creative ways to meet the frontline need.

The SharePoint close date shows December 17, 2015, with a notation of "no change."

In December 14, 2015, T-Voice Senior Analyst Ryan McDonald sent an email to Tolman and senior management about nationwide T-Voice pain point submissions, feedback and responses from support teams. A pain point McDonald identified as "trending" was requests from CSRs to automatically have their birthdays off. McDonald stated he would be creating a new pain point and "will have more details within the first quarter of 2016." (GC Exh. 90 at T1043-T1049.)<sup>20</sup> It also mentioned in December pain points as a new pain point in the T-Voice feedback monthly update for December 2015. (GC Exh. 90 at T1043 et seq.)

One Springfield suggestion, first noted July 12, 2015, was a reward for perfect attendance and to use it as a bump in realignment ranking as an incentive. (R. Exh. 12 at T190.) It appears Respondent made two responses, one July 15 and the second August 21, 2015:

7/15: Thank you for submitting your pain point. I am reviewing this item with additional Customer Service Support team

resources. Please give me a couple of weeks to provide additional updates and possible resolution to your item.

I am working with the Employee Engagement team on Tenure and Attendance recognition programs. There will be more details to come. I also recommend talk with your site leaders on how to create a Springfield recognition program for perfect attendance. As T-Voice members this is something I think you can work with Vince and your TM teams to create and show them the changes they are helping create.

The pain point is marked closed effective December 17, 2015 as "question answered." (R. Exh. 12 at T650.)<sup>21</sup>

Another pain point from Salem also suggested sharing paid time off and awaited a response. (R. Exh. 12 at T255, T715.) Some of the pain points related to paid time off during the holiday season. One such point suggested moving paid time off to be used to September. The response, apparently dated October 29, 2015, stated:

This is great feedback. I will work with the local leadership team to address these concerns.

(R. Exh. 12 at T177 and T637, Salem.)<sup>22</sup>

Another pain point on holiday work arose from Springfield. It was entered as of July 12, 2015, and apparently answered October 29, 2015. The pain point suggested that Respondent first solicit volunteers for holiday work and assign if not enough volunteered. After initially thanking the submitter and asking for some time to provide additional updates and possible resolution with the Customer Service Support team, the response to the pain point read:

This is a great suggestion and one I am reviewing with the employee engagement team. At this time we are going to follow normal process to allow for proper forecasting for all lines of business. We will see how we can improve Holiday coverage and ensure a work life balance for all of our employees

(R. Exh. 12 at T192 and T652.)

Pain points also dealt with scheduling. From Tampa, one suggested e-mail notification if the e-scheduler changed. (R. Exh. 12 at T244.) Respondent's action was "awaiting response." Another, from Mission, wanted to be able to view schedules away from work as well as be able to request paid off when not at work. It first appeared on September 9, 2015, and the last response date was December 16, 2015. Respondent's action, under review as of December 17, 2015, stated:

<sup>20</sup> About November 12, 2015, this pain point arose from Albuquerque, with the entry of "various representatives have approached [the T-Voice representative] with this pain point." The action noted, about December 10, 2015, was "will review with our HR teams and reachout to your leadership team with updates." The last date entry was December 17, 2015. Another pain point from Charleston, submitted on February 22, 2016, suggested birthdays off without using paid time off. It was marked awaiting response and had no further updates to it. (R. Exh. 12 at T342 and T802.)

<sup>21</sup> About the same time, another Springfield pain point suggested using unpaid sick days for emergencies instead of vacation (R. Exh. 12 at

T191.) The answer also was somewhat similar: no change first asked to give a few weeks to provide additional updates (7/15/15), then response on 8/21/15 of "a number of changes to sick days and I will continue to review this with the employee engagement team, but believe the new process of no today codes addresses this." (R. Exh. 12 at T651.)

<sup>22</sup> Another holiday pain point suggested that employees be allowed to give back holidays. The entry further noted, "not a way to list all the people that have approached us." On the same page, another pain point was to pay out the time or use as a gift to others. (R. Exh. 12 at T244, Salem.)

I am sharing this with the HR and RP team to see if this is something they are able to build in 2016. They are always looking on how to improve that work life balance and tools available.

(R. Exh. 12 at T129 and T589.)<sup>23</sup>

A pain point submitted in December 2015 also had a response on December 16, 2015. The pain point, submitted from Mission, was a complaint about difficulty in requesting and obtaining approval for time off. The response was: “sharing feedback with benefits and leadership team to ensure you voice is heard as we continue to look at opportunities to enhance and/or ensure our benefits are meeting the needs of all employees” (R. Exh. 12 at T245 and T705.)<sup>24</sup>

“A substantial amount of reps” requested grandparent maternity leave. Last modified apparently on August 19, 2015 and awaiting a response, Tolman was the ultimate point of contact. (GC Exh. 90 at T5089.)

#### 4. Appreciation zone and other awards

Respondent’s SharePoint log also showed that T-Voice received a number of suggestions on how to improve its Appreciation Zone program, which rewarded points to employees that eventually yielded gifts. Most of these pain point entries precede the unfair labor practice charge.

A pain point from Salem, with a first entry date of September 29, 2015, wanted more Appreciation Zone points awarded. (R. Exh. 12 at T176.) The noted action was:

I have escalated this to the Employee Engagement Team and we have begun [sic] discussion on how to integrate additional appreciation zone points for performance metrics. This item will be reviewed with each team review and how we reward monthly items

(R. Exh. 12 at T636, answered question November 12, 2015.)

A pain point from Bellingham, with the first entry date as October 29, 2015, suggested Appreciation Zone choices for employees. The response, apparently on November 19, 2015, stated:

Thank you for the feedback and I have shared this item with our Rewards and Recognition team for review. They can work with the vendor and see how to best implement feedback that we receive from the Frontline Teams.

At this time there are no identified changes based on feedback but they will continue to review options and update based on

feedback.

(R. Exh. 12 at T27 and T487, closed December 17, 2015.)

One pain point, with an entry date of November 19, 2015, came with the recommendation to allow employees to apply Appreciation Zone Points to their own phone bills (R. Exh. 12 at T226, Tampa). The action, approximately one month later, shows the following:

I will forward this feedback to the HR Employee Engagement Team to discuss for their 2016 updates. They are constantly taking feedback and working with the vendor to improve the customer experience and appreciation zone options. They were not able to confirm it would be something they are able to complete but will review the options.

Tolman was the person assigned to the pain point. (R. Exh. 12 at T686, closed December 17, 2015.)

One generous soul from Charleston, on December 25, 2015, suggested that Appreciation Zone points could be shared points with coworkers (R. Exh. 12 at T283). The action taken, dated January 4, 2016, stated:

I sent this to the HR Rewards and Recognition team to see if this is something they could include with their future improvements. If I get additional details from them after providing this idea I will update the pain point.

Tolman was assigned to this entry. (R. Exh. 12 at T743.)

One pain point arose during a December 2, 2015 T-Voice regional meeting involving Meridian and Albuquerque sites. The request was about purchasing T-Mobile merchandise. The meeting outcome determined to send out links to reps and letting them select what they want to order; place one mass order on same day of each month; cover shipping; and the CSR pays for the items. (GC Exh. 94 at T376–T377.)<sup>25</sup>

Lastly, a pain point from Oakland, entered about December 18, 2015, recommended that bonuses should be paid on the last Friday of the month because the current system created financial hardship. It was awaiting response. (R. Exh. 12 at T246 and T706.)

#### 5. Benefits and additional working conditions

Pain points on benefits were diverse. Some addressed lack of WiFi for the employees, the employee telephone program, additional suggestions for benefits and/or their flexibility, or educational and training benefits.

Free Wi-Fi for all reps in all call centers was proposed from

<sup>23</sup> One additional submission raised the pain points of scheduling through the computer program and eSchedule Planner and incorrect information regarding paid time off availability, with a suggestion provided. It was submitted from Albuquerque about October 31, 2015, with a response on November 19, 2015. The closed date was March 28, 2016. (R. Exh. 12 at T414 and T874.)

<sup>24</sup> Two additional PTO pain point submissions in January came from Oakland. One suggested reverting to a previous paid time off system to avoid losing goal points based upon attendance. (R. Exh. 12 at T277 and T737.) The second recommended being able to come back to work on the same day to avoid affecting absenteeism. (R. Exh. 12 at T279 and T739.) Neither had a response.

<sup>25</sup> Other pain points suggested: Access to the appreciation zone outside of work (R. Exh. 12 at T9 and T468, first dated November 19, 2015, Albuquerque); change the anniversary gift (called milestone) back to permit a gift no longer available, or alternatively use Appreciation Zone points for employees over 10 years (R. Exh. 12 at T290 and T750, Bellingham); offer a T-Mobile kiosk in call centers for T-Mobile gear and may use appreciation points (R. Exh. 12 at T349 and T809, Mission); and a number of representatives, as late as March 2016, want to use appreciation zone points for T-Mobile gear (R. Exh. 12 at T398 and T858, Springfield).

Oakland without acknowledgement or updates. (R. Exh. 12 at T244 and T704.) However, on November 12, 2015, at Menaul, Respondent credited T-Voice with resolving an employee pain point about inability to use wireless access during their lunches and breaks without slowing down or overloading Respondent's system. With this resolution, employees now would have no problem working on personal email and social media with the new wi-fi access during non-working times and without impact to the employees' data plans. (GC Exh. 5.)<sup>26</sup>

For the telephone program, submitted about August 4, 2015, no change was made as of the close date of December 17, 2015, with the notation:

As mentioned by Brian Brueckman in his [sic] recent Webcast, we will not be making any major changes to the employee phone program at this time including how we handle employee requests. We will continuously evaluate the experience, and look for opportunities but no changes are planned.

(R. Exh. 12 at T533.)

A creative pain point, from Albuquerque, proposed a loan company for associates as a benefit. Respondent's response was:

Thank you for this idea. I shared the details with our team and at this time this is something we are not going to pursue, because T-Mobile has a number of financial benefits and employee perk / discount programs that we provide employees. You can work with your local HR team for details on what is available

(R. Exh. 12 at T12 and T472.)

Regarding benefits enrollment, a pain point was a need for more flexibility. The October 29, 2015 response, marked as question answered, stated:

7/15: Thank you for submitting your pain point. I am reviewing this item with additional Customer Service Support team resources. Please give me a couple of weeks to provide additional updates and possible resolution to your item.

After discussing details with the HR team there unfortunately is not flexibility in changing benefits after enrollment unless it falls within the life changing events guidelines. Benefits are reviewed and able to be changed yearly.

(R. Exh. 12 at 191, T651, Springfield.)

Another Springfield pain point recommended a cash award for unused benefits, such as not using child care or tuition benefits. As of October 29, 2015, Respondent decided that no changes would be made for this pain point. (R. Exh. 12 at T194 and T654.)

A pain point, entered about November 21, 2015, recommended improving insurance by including lasik eye surgery. The response, on December 16, 2015, stated:

I have shared this with our HR teams to see if there are benefit improvements they can share with our Insurance vendors. They did reply that employees can sign up for Flex Spending account that will help with cost of Lasik surgery. Direct Frontline to work with their local HR teams for details on Flexible Spending Accounts.

(R. Exh. 12 at T130 and T590, Mission.)<sup>27</sup>

Educational benefits and career improvement also were pain points. One pain point from Oakland, awaiting response as of January 11, 2016, suggested that Respondent pay down an employee's student debt every month as a way to attract potential employees with the requirement that an employee stay a year afterwards. (R. Exh. 12 at T276 and T736.) Another, from Salem, suggested increasing educational assistance above \$5000 per year. This pain point was addressed with the responses:

I have escalated this item to HR for feedback and how to help address this concern with the Frontline teams. More details to come.

Based on feedback there have been a number of changes and updates to the educational program. The recommendation is to work with your local HR team to have the interested parties receive full details and benefit review of how to receive support for tuition reimbursement and improvements to the program.

(R. Exh. 12 at T178 and T638.)

Regarding career development, one pain point requested training for advanced positions. One submitted to SharePoint, on about December 11, 2015, included a request for training on advanced positions. The response, dated approximately a week later, stated:

Matt Meyers, the Bellingham CC Sr. LDC on the Leadership Development team was able to connect directly with [CSR name], review the current national leader support programs and development content available at [intranet website], as well as discuss the customized support and development available from the national CC Leadership Development team. Matt will continue to connect with [CSR name] to make sure development needs are met.

(R. Exh. 12 at T28 and T488.)<sup>28</sup>

Various day care options were submitted as pain points. One suggested onsite day care to decrease absenteeism. (R. Exh. 12 at T283, Charleston.) Another suggested weekend daycare options. Tolman was assigned to this pain point. (R. Exh. 12 at T283, GC Exh. 42 at T1521, Meridian.) Another suggested in-house day care for holidays. Tolman again was assigned. (R. Exh. 12 at T283 and T743, Meridian.) The last two pain points arose in December 2015 and both had the same action: "This request has come up from a couple of sites. I am working with HR to get further details on how T-Mobile is looking to support

Springfield.) For the Springfield pain point, Respondent's action was to provide feedback to HR Directors and give feedback to the benefit vendors. (R. Exh. 12 at T651.)

<sup>28</sup> Also see, e.g., R. Exh. 12 at T145 and T605, T244, and T704.

<sup>26</sup> Kozlowski denied any knowledge of the request and denied that it was a T-Voice initiative. (Tr. 774.) The documentation, which acts as an admission against interest, indicates otherwise.

<sup>27</sup> Pain points also included employees having problems calling in on their benefit accounts. (R. Exh. 12 at T155, Oakland and T191,

Work Life balance with onsite daycare options. As I get more details I will update this form.”

#### 6. Metrics

Respondent did not count metrics as employee pain points. Respondent contends that resolution of customer pain points could not affect metrics because fixing a pain point would be difficult to determine. Richards stated that he had not observed a change in a CSR’s ability to meet metrics when a pain point is resolved. (Tr. 649.) He denied that any change in metrics since T-Voice’s inception would be related to T-Voice. (Tr. 649-650.).

The SharePoint log, by my count, contained over 30 pain points related to metrics before the filing of the unfair labor practice charge. Some discussed updates to metrics; others discussed the way the metric was calculated. A common thread frequently arising was the idea that the CSR could be adversely affected by the metrics.

On about October 21, 2015, Vice President of Financial Care Sid Bothra conducted a focus group with T-Voice representatives specifically about metrics. Nikki Howard, a senior manager of operations support in Tampa, submitted minutes of the meeting. Howard divided the expressed concerns by department, then by metric, and added other suggestions/feedback. The representatives expressed a number of changing the weights of the metrics and kickers and how to remedy the problems, concerns about disputing myVOC scores and a need for more training. (GC Exh. 90 at T1257–1259.) Tolman testified she was not on the call and denied doing anything about it once she received a copy of the minutes. (Tr. 921–922.)

A number of these pain points requested “real time” updates or at least faster updates on what the CSRs’ scores were and what the new metrics were for each month. A response to a Springfield request for “real time” progress had an initial response, then a subsequent answer about October 29, 2015:

7/15: Thank you for submitting your pain point. I am reviewing this item with additional Customer Service Support team resources. Please give me a couple of weeks to provide additional updates and possible resolution to your item.

Teams provide updates to the Business Support teams for incentive details on a regular basis. The local BS support team will be able to provide details

(R. Exh. 12 at T191 and T651.) Another pain point, raised from Salem, wanted a specific metric updated each day rather than every 14 days. The response, on November 5, 2015, stated SSI was working on a transactional report to give more visibility and probably arrive in 2016; it also explained why the system currently worked in the way it does. (R. Exh. 12 at T256 and T716.)

A Tampa pain point, entered and answered on November 19, 2015, also complained that T-Metrics updated too sporadically. The answer stated:

<sup>29</sup> Also see R. Exh. 12 at T237 and T697, Wichita pain point in December 2015 for metrics and sales number should be visible on the same day or next day, if possible, with a lengthy response concluded that the 2016 implementation should improve upon accuracy and timeliness of the reporting tools.

Hi [name]-

The metrics team and SSSI [are] working diligently to improve the stability and accuracy of all of our responding tools, including T-Metrics.

We have made significant progress in recent months, and you should expect to see continued improvements into 2016.

Thank you for taking the time to provide the feedback.

(R. Exh. 12 at T686.)<sup>29</sup>

Two suggestions came in December 2015 from two different locations about the negative effects on scores to dropped calls.

Hi Birmingham, thanks for the feedback. Great news! You do have the ability to call your customers back in the event the call drops! We hope you don’t have a lot of these scenarios but we understand that calls sometimes drop and don’t want you to be negatively affected by customers calling back so we have made it available for you to call your customers back! Please take a look at the below link and especially the Valid and Invalid Callbacks Reason section. That will give you all the reasons why we would want to call our customers back. Thanks again for the feedback!

Hi Chattanooga, Thank you very much for the feedback. At this time we would not be changing the parameters regarding iOCR as the Metric Team meets weekly to discuss these scenarios and sets the goals accordingly to these situations. Don’t forget, there is also a policy you can follow for dropped calls that allows you to call the customer back thus not taking a hit on your iOCR: [intranet site link provided] Thank you again for the feedback and keep it coming!

(R. Exh. 12 at T510 and T521.)<sup>30</sup> On January 13, 2016, a similar pain point arose in Oakland. Senior Metrics Analyst Irvin gave Respondent’s response:

Hi [name],

Thank you very much for the feedback. We take these things into account when we set the goals. Some of these reasons is why we don’t set the goal to 0%. Make sure to follow the policy for dropped calls and attempt to contact the customer back if possible. Its important to remember that not all dropped calls = an iOCR hit . . . . At this time we wont be making any changes but again, please keep the feedback coming. This is a great way for us to gain insight on how things are working for you and if we can make any changes to make them better!

(R. Exh. 12 at T280 and T740.)

Another pain point submission from Springfield stated that end of month metrics were inaccurate. The initial response was on July 15, 2015, with a later response of apparently October 19, 2015 and closed on December 17, 2015.

<sup>30</sup> Also see R. Exh. 12 at T172 and T632, a similar pain point submitted from Salem, and the response in December 2015 was no change in metrics. Once again the submitter was encouraged to keep sending feedback.

7/15: Thank you for submitting your pain point. I am reviewing this item with additional Customer Service Support team resources. Please give me a couple of weeks to provide additional updates and possible resolution to your item.

I reviewed this feedback with the metrics team and unfortunately there is not a way to speed up the process, but the reps that feel there is a discrepancy they will need to work with their local leadership team for disputes. The metrics team does scrub items to ensure full fairness across all teams and are always willing to follow up on any escalations from the site leaders for reps performance.

(R. Exh. 12 at T190 and T650; also T61 from Chattanooga.)

An August 11, 2015 entry from Bellingham complained about the myVOC policy and dispute policy and how it could be “devastating” to CSR’s scoring. The response, initialed with “K.T.”, had a recorded response on August 13, but marked as “question answered” and closed December 17, 2015:

813 (K.T.) Thank you for the feedback. This is a hot topic of discussion and we will be talking through the recent updates and changes on our National T-Voice meeting Wednesday 8/19. I will work with Victoria Morgan between now and then for updates to the doc numbers. We will have a lot more details come Wednesday when we meet with NCSQ.

(R. Exh. 12 at T42 and T502, Bellingham.)

A Meridian pain point, first entered on November 18, 2015, suggested that more scores were needed to ensure accuracy of VOC. The lengthy response discussed the factors making up the VOC score. (R. Exh. 12 at T112 and T572.) For a similar pain point, also from Meridian about November 18, the T-Voice response was:

Hi [name]! There’s not a lot of detail in here but I assume you are suggesting that we ask customers more questions than just [those] we ask them today. Good news for you - we are going to test a new survey (we’ll do it behind the scenes at first without impacting any front line reps or coaches) and it will have additional questions regarding T-Mobile [ . . . ] [I]t should provide us much more insights without making the survey too long. Stay tuned for more information coming in January when we begin testing!

(R. Exh. 12 at T111 and T571.) Also see: R. Exh. 12 at T118 and T578 for pain point suggesting how to measure.

Another Meridian pain point, entered November 18, 2015, discussed iOCR disputes and suggested a dispute process. Respondent, on December 1, 2015, answered that it would not do so and told the CSR to further track “one off” calls, send them to leadership and request that they be sent to the metrics team. (R. Exh. 12 at T114, T574.)

A Mission pain point suggested CSRs have time to catch up on emails so that they did not have to stay after the shift. The response in October 2015 stated:

I have forward this idea to the RP team for review and see if this is something we could implement for future

improvements. I will update details after I get their response items.

CSRs had concerns about backskilling, apparently assisting other areas, and the effect it might have on metrics. One response, initially dated July 21 and continuing to July 24, 2015, in response to Salem, stated:

7/21 (KT): Hi [name]! Thanks for the feedback and T-Voice item. I am pulling in our Metrics team to help me better understand how back skilling impacts metrics (positive and negative). I have them looped in but will not have a full answer for your pain point until further review with the additional support team. Please give me a couple of weeks to follow up with more details.

7/24 (KT): Followed up with the metrics team and was able to get some more details for back skilling impacts. There are some negative impacts, but they are very small to the performance or monthly bonus expectations. If the back skill is more than a percent of their calls the metrics team reviews that each month and does what is right for the Frontline employee. If we see a large influx in calls that impact their metrics they have set up mitigation process to ensure the frontline employees bonus, Inner circle points and realignment items are not impacted and set the mitigation plan in place.

(R. Exh. 12 at T165 and T615, closed 12/17/15.) A similar concern was raised about September 29, 2015, with an answer on November 12, 2015:

I am working on getting some positioning and feedback for how the metrics teams is addressing the back skill items and impacts to metrics. More to come.

(R. Exh. 12 at T176 and T636, marked last as awaiting response 12/17/15.)

Another metrics pain point, submitted November 25, 2015 from Richmond, suggested that each center should determine its own metrics (GC Exh. 12 at T161). The December 2, response stated:

12/2/15 Thank you for your comment. We’ve received similar feedback from others, and based on that feedback we are working with the leadership team in each site to determine the best way to provide a “discretionary” metric that can be awarded by individual sites. You should see a change coming tentatively beginning January 1st. Over the past several months, we have spent a lot of time researching other metrics we could use for Solution Center. To drive Brian’s goals of Resolution and Customer Experience, iOCR and Quality are the best metrics that Solution Center can impact, that can also drive the enterprise goals. If you or your peers have any other recommendations, please feel free to share. Have a nice day! :-)

This pain point was marked as “awaiting response” as of December 17, 2015. (GC Exh. 12 at T621.)

In December 2015 and January 2016, a number of pain points regarding metrics were submitted. For a certain metric that counted against agents, Respondent provided this response on December 18, 2015:

Hi [name],

This is a valid complaint and one that we hear often. In Q1, the previous [metric] is going to be revisited with this in mind. We won't have a resolution here for at least a month but we will definitely consider this when redesigning the process and see how we can implement something such as this. We will also be taking a look if a specific adjustment code should be created for [metric].

Thank you for the feedback.

(R. Exh. 12 at T248 and T708, Oakland.)

Another metric pain point from Salem, with a response on December 3, 2015, discussed how a certain type of credit impacted the statistics:

Great suggestion! This is definitely a painpoint for our frontline reps. [...] This pain point hits the nail on the head of impact. In Q1 2016, we will be evaluating a feedback form that can be used in situations like this. Thanks again for the feedback.

(R. Exh. 12 at T248 and T708.)

Regarding certain myVOC disputes, a Mission pain point, entered on December 16, 2015, stated such a dispute affected employee metrics, which led to a failure in maximizing bonus potential. Assigned again to Senior Metrics Analyst Irvin, Respondent's response was:

Hi [name], very sorry for the misunderstanding. A MyVOC dispute that is approved by your leadership absolutely counts in ACERR ranking along with all the other things the metric counts towards. I.E., Winner Circle, bonus, realignment rank. The Metrics Team will be in contact with your leadership team to see what wires might have been crossed. Again, sorry for the misunderstand[ing, sic] but thank you for bringing this to our attention!

The item was closed on December 28, 2015 with the note of "no change." (R. Exh. 12 at T257 and T717.)

On about December 23, 2015, a pain point recommended that employee metrics, which was labeled as call center management, be used to have a bonus kicker for taking certain overflow calls with increased difficulty. The pain point was marked as "awaiting response." (R. Exh. 12 at T255 and T715, Salem.)

Another Springfield metrics pain point highlighted the method of calculating myVOC and recommended a way to change the calculation. The entry was from January 4, 2016 and answered the same day, apparently by Irvin:

Hi [name], thanks for the feedback. We have received this request in the past as well. The Metrics Team currently meets weekly to discuss feedback that is received and your voice is heard loud and clear. We also work with the quality team on these suggestions as they are ultimately the owners of MyVOC. At this time however, the team has discussed the current program and we will not be making any changes to the way it is currently being ran. We do appreciate the feedback and encourage you to continue to send it in as this is a great way for us to identify pain points for us to make changes! Thanks!

(R. Exh. 12 at T258 and T718.) Irvin also was assigned a January 14, 2016 pain point from Albuquerque, which he answered

the same day; his response requested an example and stated he would be happy to research the matter. (R. Exh. 12 at T284 and T744. Also see: R. Exh. T310 and T770, Richmond, entered 12/4/2015 with answer same day and closed 1/29/16.)

Irvin provided a lengthy response to an iOCR pain point based upon a Charleston submission and suggestion, dated January 18, 2016. The response, dated February 27, 2016, included a long summary of calculations of why the suggestion would not work; Irvin's discussion addressed service levels and a need to hire more employees to accommodate the suggestion, but encouraged the submitter to continue to provide feedback. (R. Exh. 12 at T331 and T791.)

Similarly, Irvin addressed a Wichita iOCR pain point that recommended not counting calls if a customer calls back within 30 seconds. Entered on February 16, 2016, Irvin answered the same day:

Hi [name]!

Thank you very much for the feedback. We in the Metrics Team are always looking for ways to balance the business and make your jobs easier. At this time however, we won't be making any changes to iOCR. Part of the reasons we don't set the goal much lower is due to the reasons you state. We incorporate a lot of things into the goal and this is one of them. I encourage you to keep the feedback coming though as we don't hear pain points without people like you. Thanks!

(R. Exh. 12 at T330 and T790.)

A pain point from Salem, entered February 15, 2016, included several suggestions, including counting statistics for the long term. The response, dated February 18, 2016, thanked the submitter for the feedback, but Respondent did not want to cause confusion and ultimately dissatisfaction with how the metrics worked, but would pass along the feedback to the metrics committee. The item was marked "under review." (R. Exh. 12 at T338 and T798, Salem.)

At least two additional metrics pain points were submitted the week of February 21, 2016. Both were marked "awaiting response." Irvin responded to one that each rep metric was under examination, which would determine the best course of action to take care of the frontline team; the impact would have to be assessed first and the submitter "should hear something in a week or so." (R. Exh. 12 at T343 and T803, T348 and T808.)

#### *F. Post-ULP Charge, Respondent Emphasizes Customer Pain Points*

The charge in this matter was filed on February 24, 2016, the day of a scheduled national T-Voice meeting. On February 23, manager of the T-Voice program Kimberly Tolman sent to T-Voice teams, including Wichita's Jason Richards and national T-Voice representatives, an agenda for a national T-Voice meeting scheduled for February 24, 2016. The agenda included a metrics focus group, which stated, "feedback and pain points of rep metrics and scorecard" and then a presentation from the marketing focus group, dealing with customer pain points. Approximately 8 hours after the original email, Tolman sent a revised agenda that eliminated discussion of metrics. Tolman's email states, "There was a recent change to the agenda and we will not be



hosting a focus group discussing metrics. The Metrics team understands the importance of gaining rep feedback and I will continue to work with them for future items.” She then limited the upcoming discussion to share pain points on marketing strategy items previously provided. (GC Exh. 92 at T4589, T4590; R. Exh. 8.) Tolman identified the metrics were removed because “this was about the time that a ---charge had come into place and we wanted to ensure that we removed any items that could be impacted . . . .” (Tr. 950–951.) Richards testified that the metrics focus group portion did not occur and, when asked why, simply said it was stricken. (Tr. 688–689.)

The Flush Facts, March 2016 edition, reflect only customer issues, such as checking status of minutes available by computer, the headset exchange policy, and a packaging issue for refurbished headsets. (GC Exh. 29.)

In March 2016, Tolman conducted a national team meeting and issues meeting notes to the T-Voice representatives, T-Voice program managers and contractors. The minutes reflect a review of T-Voice’s goals. Tolman said that it was normal to do so, but after the unfair labor practice charge was filed in February, the “leadership team” wanted to reinforce the focus on customer pain points. (Tr. 909–914; GC Exh. 90 at T966–T967.)

SharePoint reflects that a few employee pain points were entered in late February and March 2016. Some dealt with metrics and others dealt with promoting events with certain rewards.

In April 2016, a senior representative in Wichita emailed her T-Voice representative about career development. The T-Voice representative forwarded it to the T-Voice West Region and responded to the senior representative that he agreed, was working on the project and looking at ways to improve the process; he also told her to provide any other feedback to make the process better. Tolman saw the email and pulled it out of T-Voice. She instead directed to Bellingham Assistant Director Jason Lee an email, instructing him to address this issue at the site leadership level and to remind the T-Voice representative to direct employee relations items to site leadership. Tolman concluded, “Thanks for all your help as this is a highly sensitive item.” (Tr. 946–947; GC Exh. 92 at T4519–T4520.)

By T-Voice’s one-year anniversary, a July 29, 2016 email from Vice President Callie Field to all customer service employees indicated that T-Voice addressed only customer pain points; employee pain points were not mentioned.<sup>31</sup> (GC Exh. 89.) An August 16, 2016 email to Menaul Call Center and Menaul ECR, requesting applications for T-Voice representatives, now identified T-Voice’s purpose as identifying, discussing and communicating solutions for customers. (GC Exh. 6.) On August 1, 2016, Tolman announced that the T-Voice representatives voted on the “top pain points.” However, none of the pain points related to working conditions, benefits, or pay.

On June 17, 2016, Menaul’s resource planning manager emailed the Menaul coaches, senior representatives and CSRs regarding “T-Voice Follow Up” for scheduling paid time off. (GC Exh. 10). Kozlowski testified the email was “just a

communication thing” but also admitted it was a follow up to an anonymous T-Voice submission. According to Kozlowski, the anonymous submission was not entered into the SharePoint T-Voice log. (Tr. 765–767.)

When recruiting T-Voice representatives in August 2016, Kozlowski’s email now stated that T-Voice was dealing with customer issues and no longer included the phrase “internal and external customers.” (GC Exh. 6.)

### III. ANALYSIS OF ALLEGED DOMINATION, IN VIOLATION OF SECTION 8(A)(2) (COMPLAINT ¶7)

To determine whether Respondent violated Section 8(a)(2) through T-Voice, I first examine credibility, then whether T-Voice was a labor organization under Section 2(5). If I find that T-Voice operated as a labor organization, I then examine whether Respondent dominated T-Voice. *Electromation, Inc.*, 309 NLRB 990, 994 (1992), *enfd.* 35 F.3d 1148 (7th Cir. 1994); *EFCO Corp. v. NLRB*, 215 F.3d 1318 (4th Cir. 2000), *enfg.* 317 NLRB 372 (1998). Respondent’s intent in formation of T-Voice is irrelevant to the analysis of a possible Section 8(a)(2) violation: The statute applies whether intent is “benevolent or malevolent.” *Alta Bates Hospital*, 226 NLRB 485, 491 (1976).

#### A. Credibility and Evidentiary Issues

Before reviewing the actual allegations, I must address Respondent’s contention that General Counsel’s evidence, particularly the testimonies of its employee witnesses, is flawed because most of it is either hearsay or lacked proper foundation. It also contends General Counsel failed to subpoena any witnesses who were actually involved in T-Voice and relied upon employee witnesses.

Regarding the hearsay claim, Respondent maintained running objections to most of General Counsel’s employee witnesses who testified what they were told about T-Voice from either managers or T-Voice representatives. Respondent emphasizes that these statements made to the employees were made out of court and were for the truth of the matter asserted.

The CSRs’ testimony concerns what they were told was the purpose of T-Voice and submission of pain points. Some testimony also discussed T-Voice representatives describing their duties to CSRs. This testimony does not meet the definition of hearsay. Further, even presuming those statements were hearsay, hearsay may be accepted “if rationally probative in force and if corroborated by something more than the slightest amount of other evidence.” *Dauman Pallet, Inc.*, 314 NLRB 185, 186 (1994), quoting *RJR Communications*, 248 NLRB 920, 921 (1980) and citing *Livermore Joe’s Inc.*, 285 NLRB 169 fn. 3 (1987). Also see *RC Aluminum Industries, Inc.*, 343 NLRB 939, 939–940 (2004). The CSRs’ testimonies are supported by more than a scintilla of evidence: They are corroborated by a number of emails discussing T-Voice, T-Voice results, the T-Voice representatives’ roles and Respondent’s SharePoint log showing what pain points were submitted.<sup>32</sup> Respondent’s coaches and

<sup>31</sup> The email also discussed that the Retail group would soon start its T-Voice program. Neither the charge nor the complaint raises allegations that Respondent’s use of T-Voice within the Retail group employees violated the Act and I do not address any issues there.

<sup>32</sup> I consider Respondent’s emails about T-Voice and SharePoint responses to entries as Respondent’s admissions against interest, which are not hearsay pursuant to Fed. R. Evid. 801(d)(2). *Ferguson Enterprises, Inc.*, 355 NLRB 1121 fn. 2 (2010). In addition, the documents are the

managers were notified on T-Voice representatives' emails and Respondent presented no contradictory evidence.

Regarding Respondent's contention that General Counsel failed to establish credible evidence because it did not subpoena witnesses, Respondent relies partially upon the Case Handling Manual, which is not a document upon which I can rely. Further, General Counsel cross-examined all witnesses presented by Respondent.

I discredit the testimonies of Respondent's witnesses that T-Voice was only supposed to collect customer pain points. The evidence, as detailed above, shows Respondent not only accepted pain points affecting the CSRs' terms and conditions of employment before the unfair labor practice charge, but also requested employee pain points until the charge was filed. Respondent communicated with CSRs regarding employee pain points and gave T-Voice credit for changes made. Respondent's documentation also undermines its claims that metrics are customer pain points and have no relationship to CSR awards for performance. Instead the documentation reflects that it was well aware that metrics were related to employee performance and some of the pain points were assigned to Tolman herself instead of directly advising the submitter to contact local management without entry into SharePoint. Some were discussed with EE&RT or forwarded to other areas. Irvin's responses in SharePoint also reflect that it answered employee issues on metrics, even to the point of explaining why the pain point and suggestion could not be changed and, in a few cases, that it would be reviewed and considered.

*B. Is T-Voice a Labor Organization Pursuant to Section 2(5) of the Act?*

"Labor organization" is defined in Section 2(5) of the Act as: . . . [A]ny organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

The definition of labor organization is broadly construed and is a question of fact. *NLRB v. Peninsula General Hospital Med. Center*, 36 F.3d 1262, 1269 (4th Cir. 1994); *Electromation*, supra. The organization is not required to have a formal structure, elected officers, constitution or bylaws, nor is it required to meet regularly. *Id.* at 994. Even without this formal framework or regular meetings, the group may meet the definition of Section 2(5). *Id.*

In examining whether the definition of labor organization applies to a group, the Board applies a four-part test: (1) employee participation; (2) purpose to "deal with" employers; (3) the dealing concerns conditions of employment or other statutory subjects; and (4) for employee representation committees, evidence that the committee has some representation of employees. *Electromation*, 309 NLRB at 996.

(1) Employee participation in T-Voice

CSRs were selected to participate in T-Voice as representatives. Their terms of service are limited, but not so limited as to say individuals were participating as opposed to a selection of representatives. Short terms tend to favor obtaining significant input from a multitude of employees with face to face contacts. *NLRB v. Streamway Div.*, 274 F.2d 691, 294-295 (6th Cir. 1982) (3-month rotation indicated less likely to be employee representation and therefore acting as individuals); *Sears, Roebuck & Co.*, 274 NLRB 230, 243-244 (1985) (one employee from each department met with management only for two meetings before rotating out). At first, CSRs were selected for 6 months, and now for 9 months. This information demonstrates that employee participation was more likely on a representative basis, not on an individual basis.

(2) Whether T-Voice existed, at least in part, of "dealing with" the employer

Any group may be an employee representation committee or plan if it includes employee participation and deals with conditions of work or other statutory subjects. *Electromation*, 309 NLRB at 994. The term "dealing with" is broader than "collective bargaining" and "applies in situations that do not contemplate the negotiation of a collective-bargaining agreement." *Electromation*, 309 NLRB at 995. An anti-union motive is not necessary to make the finding that an employer violates Section 8(a)(2). *Electromation*, 309 NLRB at 996. However, the purpose of the group or its actual dealings, not motive, drives the discussion on "dealing with" employees for conditions of employment. *Id.* at 996; *NLRB v. Peninsula*, 36 F.3d at 1270. For further elucidation of "the interplay between Section 8(a)(2) and Section 2(5)," the *Electromation* Board relied upon *NLRB v. Cabot Carbon Co.*, 360 U.S. 203 (1959).

The question then is whether T-Voice dealt with Respondent as a "bilateral mechanism in which that group of employees effectively made proposals to management, and management responded to these proposals by acceptance or rejection by word or deed." *Polaroid Corp.*, 329 NLRB 424, 425 (1999), citing *E.I. du Pont & Co.*, 311 NLRB 893, 894 (1993). To establish dealing, the evidence must show a pattern or practice, or a purpose to have a pattern or practice; if the group only makes "ad hoc proposals," even with management acceptance or rejection, dealing is not present. *E.I. du Pont*, 311 NLRB at 894. Compromise is not a necessary element. *Id.*

The pattern and practice with T-Voice shows that employees effectively made proposals. Respondent, in its SharePoint spreadsheet, referred to pain point submissions as suggestions or feedback. Despite these labels, employees made numerous proposals for changes in their scheduling, benefits and metrics. *Dillon Stores*, 319 NLRB 1245, 1251 (1995).

If the purpose of the tasks assigned to the employees is purely a managerial function, then no dealing exists. *Crown Cork & Seal, Co., Inc.*, 334 NLRB 699, (2001), discussing *Electromation*, 309 NLRB at 995 and *General Foods Corp.*, 231 NLRB 1232, 1232-1233 (1977). On the other hand, when a group of

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best evidence about the document content, not the testimony provided about the content. *The Contract Knitter, Inc.*, 220 NLRB 558 (1975).

employees discuss suggestions that were submitted by other employees with management, Respondent appears to have designated the “worker members” as representatives of their coworkers. *NLRB v. Webcor Packaging, Inc.*, 118 F.3d 1115, 1120-1121 (6th Cir. 1998), enfg. in rel. part 319 NLRB 1204 (1995). The T-Voice representative duties were not merely managerial. Because the suggesting employees are absent and the “worker members” are acting in their stead during local and national meetings and collection of pain points, T-Voice used the “worker members” as representatives of the coworkers, particularly in management meetings, focus groups and other such contacts. *Id.* *EFCO Corp.*, 327 NLRB 372 (1998), enfd. 215 F.3d 1318 (4th Cir. 2000) must be considered for “dealing with.” The Board found three of four employer-established employee committees unlawful. The fourth committee, the employee suggestions screening committee, did not deal with the employer. This committee only reviewed suggestions in a “clerical or ministerial” method to screen suggestions from the employees’ suggestion box. 327 NLRB at 376. T-Voice did not just screen pain points. The T-Voice representatives participated in focus groups about the issues, which is beyond screening of suggestions, and implies a bilateral mechanism, beyond brainstorming, to address pain points. *Id.*

I also find instructive *Reno Hilton Resorts*, 319 NLRB 1154, 1156–1157 (1995). The employees raised issues such as compensation and other employment matters, including safety, equipment needed, employee rotation, training of new employees, staffing air flow in working areas, job descriptions, and paid sick days. Although the majority of concerns did not deal with wages, hours and terms and conditions of employment, the Board applied the definition of Section 2(5) to find that the employee organization in part dealt with the employer concerning those subjects. *Id.* at 1156–1157. Similarly here, although most of the issues did not deal with employee pain points, the employee pain points raised the loyalty program, paid time off and rewards through metrics. Respondent gave T-Voice credit for raising paid time off and the loyalty program and that T-Voice got results.

Before filing of the unfair labor practice charge, a number of the responses to the pain points also show some consideration by management. For benefits, some were forwarded to the benefits provider. For metrics, Senior Analyst Irvin reviewed methods and gave responses. Tolman too forwarded to EE&RP.

Respondent characterized T-Voice as no more than a permissive suggestion box. (R. Br. at 4.) Indeed, T-Voice sometimes used a suggestion box and the email equivalent of a suggestion box. A suggestion box normally would be a safe haven as it is unilateral and the proposals are made individually, not in group fashion. *Polaroid Corp.*, 329 NLRB at 425. However, collection of pain points was not limited to the suggestion boxes. T-Voice representatives solicited pain points through face to face contacts, such as table days and knowledge days. T-Voice representatives primarily collected the suggestions and presented them to management. According to Respondent’s witnesses, the SharePoint entries were not to be duplicated. As seen above, several of the pain points identify concerns either from a number of representatives or a number of call centers. Compared to the suggestion box, T-Voice also made responses directly and

indirectly to those who submitted pain points. In several cases, Respondent moved the submitted employee pain point to a different department or to other managers to address the issue, with the promise to have further updates. The communication therefore was not a unilateral submission of pain points.

Respondent also cites *Crown Cork & Seal*, supra, to deny T-Voice dealt with Respondent. However, the Board found the tasks delegated to the employee committees were purely managerial and therefore could not be a labor organization pursuant to Section 2(5). 334 NLRB at 701–702. As pointed out in *Keeler Brass Automotive Group*, 317 NLRB 1110, 1114 (1995), the committees in *Crown Cork & Seal* made changes without the employer’s approval. With T-Voice, some of the tasks, such as training, could be considered managerial; nonetheless, the collection of employee pain points and attendance at focus groups and Respondent’s pattern of responses support a finding that Respondent used T-Voice to “deal with.”

(3) These dealings concerned “grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.”

As described above, T-Voice dealt with a number of employee pain points and Respondent credited T-Voice with a number of changes, particularly in its loyalty program, paid time off, WiFi access, and charging stations in Springfield. In many pain points when changes were not made, Respondent logged in answers in its SharePoint program, with some directly addressed to employees or a call center, why it could not comply, or that the issue was under consideration. *Thompson Ramo Woolridge, Inc.*, 132 NLRB 993, 994–995 (1962), enfd. as modified, 305 F.2d 807 (7th Cir. 1962).

Despite Respondent’s insistence that T-Voice was not supposed to deal with these issues, the process and answers given within the SharePoint log undermine testimony from Respondent’s witnesses. This conclusion is further supported by anecdotal evidence from CSRs and emails from management, including Vice President Brueckman. Even if metrics were excluded, the topics dealt directly with diverse employee issues, such as paid time off, grandparental leave, wifi access for employees, vision benefits, among others. *Dillon Stores*, 319 NLRB at 1247-1248 (e.g., requests about smoking lounge and vacation are proposals on wages, hours and terms and conditions of employment).

Respondent skims over this topic in its analysis, with little discussion of the topics, volume of interactions and handling of the issues. I distinguish the issues from the one issue resolved in *General Foods*, 231 NLRB at 1235: There the only issue possibly dealt with holiday work schedules, which the administrative law judge termed as “de minimis and isolated.” Here, the number of issues included not only holiday schedules, but paid time off, other forms of leave, loyalty awards, how to obtain and use Appreciation Zone awards, and the metrics described above. Because the pain points were not supposed to be repeated in the SharePoint spreadsheet, some of the pain points note that a number of representatives asked for the same thing.

Based upon this information, T-Voice dealt specifically with issues impacting only employees, not customers.

#### 4. Evidence of some representation of employees

Representation of employees is evidenced by T-Voice

obtained T-Voice representatives from different shifts, various call functions and different call centers. Anecdotal evidence demonstrates that the T-Voice representatives verbally encouraged fellow CSRs to submit pain points either indirectly through suggestion boxes or email or directly to them. But see *EFCO*, 327 NLRB at 375 fn. 8 (citing *Electromation*, 309 NLRB at 994 fn. 20, finding that the committees acted in a representational capacity and therefore unnecessary to determine whether employee group acted as a representative of other employees).

#### 5. Conclusion regarding 2(5) status

The factors support a finding that T-Voice was a labor organization within the meaning of Section 2(5) of the Act. The next step is to determine whether T-Voice was dominated as alleged.

#### C. Was T-Voice Dominated, as Defined in Section 8(a)(2) of the Act?

Section 8(a)(2) of the Act states that an employer commits an unfair labor practice when it acts to:

To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay . . . .

*Electromation*, 309 NLRB at 995-996, instructs that actual domination exists “by virtue of the employer’s specific acts of creating the organization itself and determining its structure and function.” If the organization is formed by employees and its structure is determined by employees, then the organization is not dominated. *Id.*<sup>33</sup>

This analysis here examines three elements for an employee representation group: Management creates the labor organization; management determines the structure and function of the labor organization; and management controls the continued existence of management. *Webcor Packaging, Inc.*, 319 NLRB at 1204.

Uncontroverted evidence shows Respondent created T-Voice. *Yukon Mfg. Co.*, 310 NLRB 314, 335-336 (1993). It completely supported T-Voice financially. Tolman drew up the by-laws. Respondent determined T-Voice’s purpose: Until the unfair labor practice charge was filed, T-Voice was not limited to collecting and resolving customer pain points in a “closed feedback loop,” but also dealt with employee pain points. Tolman’s documentation even stated that the program was to drive recognition.

Respondent dictated the T-Voice’s structure and direction by establishing its goals and meeting agendas, requiring face to face meetings with management, and determining how to enter pain points. Management attended the committee meetings. These

facts demonstrate that Respondent determined the structure and function of T-Voice. *EFCO*, 327 NLRB at 377.

T-Voice’s administration and continued existence depended upon Respondent. Respondent stipulated that it provided all financial support for T-Voice. It maintained all databanks and controlled the scheduling of T-Voice representatives’ activities through resource planning.<sup>34</sup> Respondent, with some assistance from T-Voice representatives, solicited CSRs for new T-Voice representatives at Respondent’s appointed times. Respondent determined how many T-Voice representatives would serve at a time, the length of service, and which areas would be represented. T-Voice representatives were selected by management according to Respondent’s criteria. *Electromation*, 35 F.3d at 1154; *NLRB v. Webcor Packaging, Inc.*, 118 F.3d 1115 (6<sup>th</sup> Cir. 1997), cert. denied 118 S.Ct. 1035 (1998), enfg. 319 NLRB 1203 (1995). Respondent never claimed that T-Voice could be disbanded at the employees’ choice and no evidence was presented to show T-Voice had a limited life span. Thus, T-Voice’s initial and continued existence depended upon Respondent.

The question here is whether T-Voice “is the creation of management, whose structure and function are essentially determined by management . . . and whose continued existence depends on the fiat of management.” *Electromation, Inc.*, 309 NLRB at 995. Each of these factors has been demonstrated. In *Reno Hilton*, 319 NLRB at 1157, domination existed when the employer developed the quality committee, created the agendas, determined the number, size and structure of the committees and paid the employees for their time. Management included itself in the committee meetings and maintained “ultimate decision making power.” *Id.* Similarly, employees volunteered for their positions. *Id.* However, Respondent took the domination one step further than in *Reno Hilton* by having managers make the ultimate selection of the T-Voice representatives. Compare *Reno Hilton*, 319 NLRB at 1157. Respondent’s actions with T-Voice are similar to *Ryder Distribution Resources, Inc.*, 311 NLRB 814 (1993): Domination existed when an employer created wage and benefit committee, sought employee volunteers, assigned management representative to committee, conducted formalized training sessions to teach employees about employer’s problem-solving methods and financially supported the committee. Respondent also appointed specific managers to coordinate the entire program. *Electromation*, 35 F.3d at 1162-1163.

Respondent’s brief does not contend that it cured its unlawful conduct after the unfair labor practice charge was filed, but I consider Respondent’s conduct pre- and post-charge. An employer may relieve itself of unlawful conduct through an effective repudiation. *Passavant Memorial Area Hospital*, 127 NLRB 138 (1978). The repudiation must be timely, unambiguous, specific to the nature of the conduct, and free from other proscribed illegal conduct. *Id.*, citing *Douglas Div., The Scott & Fetzer Co.*,

<sup>33</sup> Employee satisfaction or dissatisfaction with T-Voice is not relevant to the inquiry. *NLRB v. Newport News Shipbuilding & Dry Dock Co.*, 308 U.S. 241, 247-248 (1939). I therefore make no findings and rely upon objective facts.

<sup>34</sup> According to *Keeler Brass Automotive Group*, 317 NLRB at 1115-1116, paying for T-Voice representatives’ time and providing meeting

space and equipment are not per se violations of Section 8(a)(2); however, when “in furtherance of Respondent’s domination of the Committee,” the totality of circumstances dictates that Respondent was not acting at “arm’s length” with T-Voice. *Id.*

228 NLRB 1016, 1024 (1977). Although Respondent tapered off on accepting employee pain points by the end of March 2016, or at least did not enter them into the SharePoint spreadsheet, its actions do not pass the *Passavant* criteria as it instead said that it re-emphasized that T-Voice was to collect only customer pain points. Because the unlawful conduct took place over several months, Respondent's shift to accepting only customer pain points, without employee pain points, was not timely. Respondent did nothing regarding its previous acceptance and treatment of employee pain points.

I therefore find that, since August 23, 2015, Respondent violated Section 8(a)(2) by dominating T-Voice.

#### IV. ALLEGATIONS THAT RESPONDENT VIOLATED SECTIONS 8(A)(1) AND (3) BY PROMISING AND GRANTING BENEFITS DURING ONGOING UNION CAMPAIGN (COMPLAINT ¶¶6(A) AND 8)

General Counsel alleges that Respondent promised increased benefits and improved terms and conditions for employment if employees submitted pain points through T-Voice, in violation of Section 8(a)(1). (Complaint ¶6(a)). General Counsel also alleges that respondent granted benefits through solicitation of grievances in violation of Section 8(a)(3). Both allegations maintain that these actions occurred during Charging Party CWA's ongoing union campaign.

An antiunion motive is not necessary to make the finding that an employer violates Section 8(a)(2). *Electromation*, 309 NLRB at 996. Also see *NLRB v. Webcor*, 118 F.3d at 1123. However, proof of an employer's discriminatory motivation may be based on evidence of the employer's contemporaneous commission of other unfair labor practices. See, e.g., *Amptech, Inc.*, 342 NLRB 1131, 1135 (2004), enfd. 165 Fed.Appx. 435 (6th Cir. 2006); *David Saxe Productions, LLC*, 364 NLRB No. 100 (2016).

Respondent's witnesses testified that they accepted employee complaints through an open-door policy. However, with T-Voice, the methodology changed with implied promises to remedy them. *Center Service System Div.*, 345 NLRB 729, 730 (2005), enfd. in rel. part, 482 F.3d 425 (6th Cir. 2007) (employer cannot rely on past practice if it significantly alters how it solicits during a union campaign); *Amptech*, 342 NLRB at 1136. I therefore find that Respondent's promises to look into these issues and respond through T-Voice was indeed solicitation of grievance and implied promises to remedy employee grievances during an ongoing union campaign.

The 8(a)(3) allegation, however, requires a finding that Respondent, through T-Voice, granted these benefits due to the ongoing unionization efforts. Because of the duration of the union campaign, which was over 6 years at the time of the hearing, I am unable to find specific evidence of animus related to Respondent's grant of benefits through T-Voice. The prior unfair labor practices findings are not specific evidence that Respondent granted these particular benefits to stave off unionization. Most cases cited by General Counsel and Charging Party show that the grant of wage increases or other benefits occurred shortly after a union campaign began or after the petition was filed. See, e.g., *Capitol EMI Music*, 311 NLRB 997, 1010–1011 (1993), enfd. 23 F.3d 399 (4th Cir. 1994).

Examining the grant of benefits under Section 8(a)(1), instead of Section 8(a)(3), requires an analysis under *NLRB v. Exchange*

*Parts*, 374 U.S. 405 (1964). *Exchange Parts* is applicable even when a petition has not yet been filed. *Manor Care Health Services-Easton*, 356 NLRB 202, 222 (2010), enfd. 661 F.3d 1139 (D.C. Cir. 2011). Normally analysis under Section 8(a)(1) for grant of benefits would be through an objective standard, but *Exchange Parts* examines for motive. *Id.*, citing *Network Dynamics Cabling*, 351 NLRB 1423, 1424 (2007), and cases cited therein. Here, a number of years passed, and like the Section 8(a)(3), I cannot say the record shows that Respondent and T-Voice's motives were spurred by animus. I therefore shall recommend dismissal of this allegation.

#### V. ALLEGED CONFIDENTIALITY RULE PROHIBITING EMPLOYEES FROM DISCUSSING T-VOICE, IN VIOLATION OF SECTION 8(A)(1)

General Counsel contends that Respondent violated Section 8(a)(1) with six documents labeled either confidential or for Respondent's internal use only. As previously noted, all CSRs sign a confidentiality agreement for trade secrets. I will first examine the applicable law, then present the documents. Documents specifically arose in Albuquerque and on a national level. Lastly, I examine the parties' positions and provide analysis.

##### A. Applicable Law for Confidentiality

Section 7 provides employees with the right to self-organization and collectively bargaining, as well as the right to act together for their mutual aid or protection. These rights have long been interpreted to "necessarily encompass[ ] the right effectively to communicate with one another regarding self-organization at the jobsite." *Beth Israel Hospital v. NLRB*, 437 U.S. 483, 491 (1978). These rights includes employee communications regarding their terms and conditions of employment. *Central Hardware Co. v. NLRB*, 407 U.S. 539, 542–543 (1972); *Parexel International, LLC*, 356 NLRB 516, 518 (2011), citing *Aroostook County Regional Ophthalmology Center*, 317 NLRB 218, 220 (1995), enfd. in part 81 F.3d 209 (D.C. Cir. 1996) (discussions regarding wages, the core of Section 7 rights, are the grist on which concerted activity feeds).

An employer violates Section 8(a)(1) of the Act if it maintains workplace rules that would reasonably tend to chill employees in the exercise of their Section 7 rights. See *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998), enfd. 203 F.3d 52 (D.C. Cir. 1999). The analytical framework for assessing whether maintenance of rules violates the Act is set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). Under *Lutheran Heritage*, a work rule is unlawful if "the rule *explicitly* restricts activities protected by Section 7." *Id.* at 646 (emphasis in original). If the work rule does not explicitly restrict protected activities, it nonetheless will violate Section 8(a)(1) if "(1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights." *Id.* at 647.

Rules cannot be construed in isolation and must be given a reasonable reading. *Roomstores of Phoenix, LLC*, 357 NLRB 1690 fn. 3 (2011); *Lutheran Heritage*, 343 NLRB at 646. Any ambiguity in the rule must be construed against the drafter as employees should not have to decide what information is not lawfully subject to prohibition. *Hyundai America Shipping*

*Agency*, 357 NLRB 860, 861-862 (2011); *Lafayette Park*, 343 NLRB at 825. Facial challenges to the rules do not depend upon evidence of enforcement. *Schwan's Home Service*, 364 NLRB No. 20, slip op. at 2, fn. 4 (2016). All rules are examined to determine whether an employee could reasonably construe the language to prohibit Section 7 activities. *Lily Transportation Corp.*, 362 NLRB 406 (2015).

An employer may legitimately require confidentiality rules in appropriate circumstances. However, the employer must attempt to minimize the impact of such a rule upon protected activity. *Boeing Co.*, 362 NLRB 1789, 1789 (2015). When the rule fails to present "accompanying language that would tend to restrict its application," employees reasonably could assume that protected concerted activities, such as discussing wages, hours and terms and conditions of employment, are included in the prohibition. *Lily Transportation Corp.*, 362 NLRB 406, 406 fn. 3.

#### B. Alleged Violations from Menaul

Each of the following four documents was labeled with the reminder: "Content is for T-Mobile Internal Use Only." Menaul Manager Niki Kozlowski was the author of each document.

General Counsel cites a July 11, 2015 example that included the phrase "Content is for T-Mobile Internal Use Only". General Counsel summarized the email as follows:

In a July 11, 2015 email from Kozlowski to all employees at the Albuquerque Menaul Call Center, she praises the work of T-Voice by noting the number of pain points submitted along with a request for employees to submit any ideas they have to improve customer service options, policy updates, nice to haves, etc. Within her email, Kozlowski included pictures of T-Voice Representatives along with the line, "Content is for T-Mobile Internal Use Only".

The second instance raised by General Counsel was a December 9, 2015, email from Kozlowski, in which she solicited employees for new T-Voice representatives. After thanking everyone for making 2015 a year in which T-Voice members effectuated changes, she stated T-Voice was the method of identifying, discussing, and communicating solutions to roadblocks for internal and external customers, and for providing frontline feedback to senior management. (GC Exh. 20.)

In the third instance, Kozlowski's email discussed a scavenger hunt at Menaul. The hunt concerned Respondent's new intranet site and, in turn, promised employees an opportunity to win prizes like smartphone and accessories. (GC Exh. 94 at T1660.)

Lastly, on August 6, 2016, Kozlowski emailed the Menaul employees to recruit for new T-Voice representatives. After thanking the current T-Voice representatives, she briefly included the purpose of T-Voice and the necessary method for applying for a position. (GC Exh. 6.)

#### C. Alleged documents at the corporate level

##### 1. T-Voice charter

The T-Voice Charter was marked "T-Mobile Confidential." (GC Exh. 40; GC Exh. 94 at T1053.) Employees received copies of the charter. (Tr. 421.) The charter includes no specific data of trade secrets, marketing plans, or specifics on metrics. Instead, it identifies the goal of T-Voice to create a closed loop

communication system, briefly identifies selection criteria for T-Voice representatives, discusses meeting schedules for clearing up points," and identifies in generalities the key tasks. (GC Exh. 40.)

##### 2. Summary of Charleston summit posted to OneVoice

Respondent posted to its intranet site a one-page summary about the Charleston summit. All employees have access to the intranet. Authored by Senior Communications Manager for Frontline Communications Vanessa Gallant, the summary discusses that 65 T-Voice representatives attended the summit and an overview of what happened. (GC Exh. 94 at TMSP1538.) The bottom line states "Content is for Internal TMUS Use Only."

#### D. Parties' Positions and Analysis

None of the emails were issued in response to union activity. Nothing in the record reflects enforcement of the confidentiality requirement. Therefore, the standard is based upon whether a reasonable employee would read the confidentiality requirement as preventing the employee from sharing the information with persons outside the organization.

##### 1. Parties' positions

General Counsel argues that the confidentiality requirements in the above emails and documents restrict employee communication about their wages, hours, and terms and conditions of employment, pursuant to *Lutheran Heritage*, supra, and *Triple Play Sports Bar & Grille*, 361 NLRB 308, 308 (2014). Respondent contends that the lack of testimony about the phrase warrants a finding that General Counsel did not carry its burden of proof.

Respondent also contends that most of the documents concerning T-Voice, except those mentioned by General Counsel, were not subject to such restriction and employees therefore would understand that:

... the six-word phrase can only be interpreted, at most, as a restriction on the "content of the particular email, if and only if, the email contains information not readily available elsewhere concerning T-Voice (i.e., commercially sensitive or non-public information concerning customers. This reading would not violate the law."

(R. Br. at 117.) Respondent points to two cases to demonstrate that a general warning is sufficient for these documents: *Super K-Mart*, 330 NLRB 263, 263-264 (1999); and *Lafayette Park Hotel*, 326 NLRB at 824 and 826.

##### 2. Analysis

No evidence was presented that the warnings of confidentiality were enforced and I am permitted to determine whether the documents are facially lawful. See generally *Schwan's Home Services*, supra.

The first Menaul email occurred in July 2015. The 6-month statute of limitations is based upon a charge filed on February 23, 2016. The statute of limitations period begins then on August 23, 2015. Because this email occurred before the statute of limitations, I dismiss any portion of the allegation relating to this email.

The remainder of the emails occurred within the statute of limitations. None contain any trade secrets, marketing plans, or other information that might be considered confidential. Nothing

discusses private customer information. A reasonable employee would not necessarily read the emails with its confidentiality restriction and follow Respondent's logic to search for other documents that allow outside discussion. Respondent's reasoning ignores that, in requiring employees to search for similar information, it supports a finding that the confidentiality requirements are ambiguous. Further, Respondent's logic, that the information is available elsewhere and employees would know whether the information was confidential from other documents, begs the question: Why these emails? Respondent has not explained satisfactorily why these emails, compared to other documents, are confidential, but the information implicitly may not be so restricted. One email promises potential rewards for participation in the scavenger hunt and therefore deals with a benefit Respondent gave to employees. These emails deal with working conditions, including the existence of T-Voice. I therefore find that Respondent unlawfully restricted communication about the three Menaul emails by labeling them as confidential and for internal use only.

I rely upon more recent cases, such as *Boeing*, supra, and *Lily Transportation*, supra, than *Super K-Mart* and *Lafayette*. The facts in *Lafayette Park Hotel* are distinguishable as well. The Board in *Lafayette Park Hotel* examined a rule that prohibited divulging private information to employees, other individuals, or entities without authorization to receive such information. The Board concluded that employees reasonably would understand that the confidential information was legitimate business information, not information related to Section 7 rights.

VI. SECTION 8(A)(1) ALLEGATION THAT MANAGER INTERROGATED EMPLOYEES ABOUT HOME VISITS FROM CHARGING PARTY (COMPLAINT ¶6(B))

A. January 8, 2016: Events in a Wichita Call Center Group Meeting (Complaint ¶6(b))

Three teams met with Wichita Director Jeffrey Elliott. The teams were supervised by Coahes Wambach, Uhde and Maron, with about 35 to 40 people in attendance.

CSR Angela Melvin testified that Elliott began the meeting with statistics on the number of pain points submitted and the number resolved. He gave statistics on the decline of unions and said he had an open-door policy. Uhde talked about the iPhone launch and effect on call backs/iOCR. Melvin further testified that, at the beginning of the meeting, Elliott asked how many people had a home visit from a union representative. Five to six people raised their hands. Maron talked about that things an employer could and could not say, and further said that signing a union card was like signing a blank check. Melvin raised her hand and said there was no union at T-Mobile at the time. One of the CSRs, Vincent Krehbiel, started screaming at her in the meeting about how the hell she got his address. Melvin said she did not have his address. He said the hell she didn't. She said she did not, but the union might. Krehbiel asked Jeff Elliott if he could hit the union representatives with his car. Elliott said, in a condescending manner, that he did not want anyone to get hurt. (Tr. 366.)

CSR Vincent Krehbiel, who attended the meeting as part of Uhde's team, testified that he was the one who brought up how

the Union obtained his address. He addressed his concern to Elliott, but admitted asking how many of his fellow employees had been contacted by the Union at their homes. (Tr. 520.) Elliott said the company did not provide that information to employees. (Tr. 525.) Krehbiel directed his questions several times to one female employee, whose name he did not know, about the Union obtaining personal information. He said the fellow employee gave him no response. He was angry then, and he was angry when he testified as well because he did not want his wife disturbed. Krehbiel recalled little else in the meeting.

B. Analysis

I credit that Krehbiel raised the issue of whether the Union had the employee addresses. Elliott testified but had little independent recall of the overall meeting events. I do not rely upon his testimony except for identifying Krehbiel as the person who questioned his fellow employees about the home visits. Melvin had difficulty recalling events and was hesitant. I therefore cannot find that Elliott interrogated employees about the home visits and recommend dismissal of this allegation.

CONCLUSIONS OF LAW

1. Respondent T-Mobile USA, Inc. is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. Charging Party Communication Workers of America AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. Since at least June 1, 2015, T-Voice has been a labor organization within the meaning of Section 2(5) of the Act.

4. Since August 23, 2015, Respondent T-Mobile, through T-Voice, violated Section 8(a)(1) by implied promising to remedy grievances during an ongoing union campaign.

5. Respondent violated Section 8(a)(1) by limiting to internal discussion only certain emails and documents.

6. Since August 23, 2015, Respondent T-Mobile violated Section 8(a)(2) of the Act by maintaining, dominating and assisting T-Voice.

7. The unfair labor practices committed by the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent T-Mobile USA, Inc. has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Whenever an employer unlawfully establishes and maintains a dominated labor organization, that organization must be dismantled. *Webcor*, 319 NLRB at 1206 and cases cited therein. The rationale for doing so dates back to the earlier days of enforcing the Act: The dominated labor organization cannot function as a bargaining representative of employees and employees must have a choice to begin anew for organizing purposes. *Id.* (citing *NLRB v. Pennsylvania Greyhound Lines*, 303 U.S. 261, 270 (1938) and *NLRB v. Newport News Shipbuilding Co.*, 308 U.S. 241, 250 (1939)). Also see: *Keeler Brass Automotive Group*, 317 NLRB at 1116; *Ona Corp.*, 278 NLRB 400 (1987) (disestablishment essential when §8(a)(2) violation found).

Regarding the unlawful confidentiality provisions that act as

unlawful rules, Respondent must immediately rescind the offending rule so that employees may engage in protected activity without fear of being subjected to the unlawful rule. *Guardsmark, LLC*, 344 NLRB 809, 812 (2005), enfd. in rel. part 475 F.3d 369 (D.C. Cir. 2007). Pursuant to *Guardsmark*, Respondent may comply with the Order by rescinding the unlawful rules and republishing the documents without them. Any revised documents should be distributed to all employees.

The Respondent shall post an appropriate informational notice, as described in the attached appendix. This notice shall be posted in the Employer's facility or wherever the notices to employees are regularly posted for 60 days without anything covering it up or defacing its contents. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 23, 2015. When the notice is issued to the Employer, it shall sign it or otherwise notify Region 14 of the Board what action it will take with respect to this decision.

General Counsel requests the enhanced remedy of notice readings. For serious and persistent multiple unfair labor practices, a notice reading is a "minimal acknowledgement of the obligation . . . imposed by law and provides employees with some assurance that their rights under the Act will be respected in the future." *Affinity Medical Center*, 362 NLRB 654,654 (2015). According to General Counsel, notice readings are particularly important to ensure that all employees, not just those reading bulletin boards, are aware of the information contained in the Board's notice. *UNF West, Inc. v. NLRB*, 844 F.3d 451, 463 (5th Cir. 2016), enfg. 363 NLRB No. 96 (2016). The reading is an "effective but moderate way to let in a warming wind of information, and more important, reassurance." *J.P. Stevens & Co v. NLRB*, 417 F.2d 533, 539–540 (5th Cir. 1969).

General Counsel relies upon past cases involving Respondent's actions. Respondent, at its Albuquerque Menaull Call Center, promulgated an unlawful rule against speaking about unionization. *T-Mobile USA, Inc.*, 365 NLRB No. 15 (2017). Another case found Respondent maintained numerous unlawful rules at its facilities across the United States and Puerto Rico. *T-Mobile USA, Inc.*, 363 NLRB No. 171 (2016). Respondent appealed four of the rules to the Fifth Circuit; the Board has applied for enforcement. Also pending is an administrative law judge's ruling regarding the Wichita facility, but it is not precedential until the Board rules upon Respondent's exceptions. I do not rely upon these earlier decisions as they are of a different nature than the

Section 8(a)(2) violations found here.

Although I find the 8(a)(2) violation pervasive throughout the call centers, the prior unfair labor practices primarily involve rules, interrogation, and threats of discipline. I cannot find the prior labor practices, even coupled with the Section 8(a)(2) violation, constitutes such a combination of serious violations. I therefore decline to recommend reading of notices.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>35</sup>

#### ORDER

Respondent T-Mobile USA, Inc., its officers, agents, successors and assigns, shall

##### 1. Cease and desist from

(a) Dominating, interfering with the formation or administration, or assisting or otherwise supporting T-Voice or any other labor organization at any of its call center facilities;

(b) Soliciting grievances and impliedly promising to remedy them during an ongoing union campaign;

(c) Maintaining confidentiality rules on emails and summaries about T-Voice, including recruiting for T-Voice representatives, scavenger hunts, the T-Voice Charter, and the summary of the Charleston summit.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

##### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Immediately disestablish and cease giving assistance, including administration and financial assistance, or any other support to T-Voice or any other labor organization;

(b) Rescind or revise the emails and documents, which recruit for T-Voice positions, direct employees to engage in a scavenger hunt, the T-Voice charter, and the summary of the Charleston summit, that limit disclosure of the information to internal use only or are marked confidential

(c) Furnish all employees with revised copies of the documents above that advise that the unlawful rules have been rescinded, or provide language of lawful rules.

(d) Within 14 days after service by the Region, post at its call center facilities copies of the attached notice marked "Appendix."<sup>36</sup> Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure

<sup>35</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes due under the terms of this Order.

<sup>36</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National

Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."



that the notices are not altered, defaced, or covered by any other material. If Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 23, 2015.

(e) Within 21 days after service by the Region, file with the Regional Director for Region 14 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that all allegations contained in the complaint found not to constitute unfair labor practices are dismissed.

Dated, Washington, D.C. April 3, 2017

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT dominate, assist or otherwise support T-Voice or any other labor organization.

WE WILL NOT solicit grievances or impliedly promise to remedy them during an ongoing union campaign.

WE WILL NOT maintain rules that prohibit your discussions

about T-Voice, such as recruiting for T-Voice representatives, directing you to participate in scavenger hunts, discussing the Charleston summit or T-Voice Charter with anyone not employed by the company.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL immediately disestablish and cease giving any assistance or support to T-Voice or any other labor organization.

WE WILL rescind or revise the rules that prohibit your discussions about T-Voice, such as recruiting for T-Voice representatives, directing you to participate in scavenger hunts, discussing the Charleston summit or T-Voice Charter with anyone not employed by the company.

WE WILL provide you with revised or rescinded copies of the documents that previously prohibited discussions about T-Voice, such as recruiting for T-Voice representatives, directing you to participate in scavenger hunters, and discussing the Charleston summit or the T-Voice Charter with anyone not employed by the company.

T-MOBILE USA, INC.

The Administrative Law Judge's decision can be found at [www.nlrb.gov/case/14-CA-170229](http://www.nlrb.gov/case/14-CA-170229) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

